

## **EXHIBIT 1**

Page 1

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

3 In re:  
4 HIGHLAND CAPITAL  
MANAGEMENT, L.P.,  
5 Reorganized Debtor.  
§ Chapter 11  
§  
§ Case No. 19-34054-sgj11

9 DEPOSITION OF DUSTIN NORRIS AND 30(b)(6) OF  
0 HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,  
1 AND NEXPOINT ADVISORS, L.P.

.2 Dallas, Texas

3 Friday, March 4, 2022

4 (REPORTED REMOTELY)

3 REPORTED BY:

4 Linda Russell, CSR

5            JOB NO: 207400

Page 2

1 NORRIS

2

3

4 March 4, 2022

5 9:33 a.m.

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8 DEPOSITION OF DUSTIN NORRIS, conducted via  
9 Zoom, taken before Linda Russell, Certified Court  
10 Reporter No. 2965, pursuant to the Federal Rules of  
11 Civil Procedure for the United States District  
12 Court pertaining to the taking of depositions,  
13 commencing at 9:33 a.m. Central Time, on  
14 March 4, 2022.

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1 NORRIS

2 A P P E A R A N C E S

3 (Attendees appearing via remote videoconference)

4

5 COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT, L.P.:

HAYLEY WINOGRAD, ESQ.

JOHN MORRIS, ESQ.

Pachulski Stang Ziehl & Jones

780 Third Avenue

New York, New York 10017

8

9

10 COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT FUND  
ADVISORS, L.P. AND NEXPOINT ADVISORS, L.P.

11 DAVOR RUKAVINA, ESQ.

THOMAS BERGHMAN, ESQ.

12 Munsch Hardt Kopf & Harr

500 N. Akard Street

13

Dallas, Texas 75201

14

15

16 ALSO PRESENT:

La Asia Canty, Paralegal

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## 1 I N D E X

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1 NORRIS

2 P-R-O-C-E-E-D-I-N-G-S

3 COURT REPORTER: My name is Linda  
4 Russell. I am a certified court reporter in  
5 association with TSG Reporting, Inc.

6 Today's date is March 4, 2022, and  
7 the time is 9:33 a.m. Central Time.

8 Due to the severity of COVID-19 and  
9 following the practice of social distancing, I  
10 will not be in the same room with the witness but  
11 will record this deposition remotely and will  
12 swear the witness remotely.

13 Do all parties stipulate to the  
14 validity of the remote recording and remote  
15 swearing and that it will be admissible in the  
16 courtroom as if it had been taken following  
17 Rule 30 of the Federal Rules of Civil Procedures  
18 and/or the State's rules where this case is  
19 pending?

20 MR. RUKAVINA: The Advisors so  
21 stipulate.

22 MS. WINOGRAD: Highland stipulates as  
23 well.

24 DUSTIN NORRIS,  
25 having sworn or affirmed to tell the

1 NORRIS

2 truth, the whole truth and nothing but the  
3 truth was examined and testified as  
4 follows:

5 EXAMINATION

6 BY MS. WINOGRAD:

7 Q. Good morning, Mr. Norris. My name is  
8 Hayley Winograd, I'm an attorney at the law firm  
9 of Pachulski Stang Ziehl & Jones, and I'll be --  
10 I'll be taking your deposition today. We  
11 represent Highland Capital Management, LP. Do  
12 you understand that?

13 A. Yes.

14 Q. Okay. And do you understand that  
15 you're going to be deposed today in your capacity  
16 as a 30(b) (6) witness on behalf of NexPoint  
17 Advisors, LP?

18 A. I do.

19 Q. And can we refer to NexPoint Advisors  
20 as NexPoint?

21 A. Yes.

22 Q. And you also understand that you are  
23 going to be deposed in your 30(b) (6) capacity for  
24 the entity Highland Capital Management Fund  
25 Advisors, LP, right?

1 NORRIS

2 A. Yes.

3 Q. And can we refer to that entity as  
4 HCMFA?

5 A. Yes.

6 MR. RUKAVINA: I'm sorry, I can  
7 barely hear you, Dustin.

8 Can you hear him, Hayley, just fine?

9 Dustin, just say --

10 MS. WINOGRAD: I don't think -- can  
11 you --

12 THE WITNESS: Can you hear me -- if I  
13 speak louder, is that better?

14 MR. RUKAVINA: Yeah, that's better.

15 MS. WINOGRAD: That's better.

16 BY MS. WINOGRAD:

17 Q. I'm also going to ask that when I ask  
18 you a question, you just wait for me to finish  
19 the question before you begin your answer. Is  
20 that fair?

21 A. Yes.

22 Q. Okay. And I'm going to be -- we're  
23 going to be putting up documents on the screen  
24 from time to time, so if you need to see any  
25 other portion of the document in order to give a

1 NORRIS

2 more complete answer, just let us know.

3 A. Okay.

4 Q. And if you need me to repeat a  
5 question if you can't hear me, just ask me, and I  
6 can repeat it.

7 Okay. I'm going to ask my colleague  
8 Ms. La Asia Carty to please put Exhibit 1 on the  
9 screen.

10 (Exhibit 1 marked for identification.)

11 BY MS. WINOGRAD:

12 Q. Okay. Mr. Norris, have you seen this  
13 document before?

14 A. Yes.

15 Q. Okay. Do you understand that your  
16 answers as the Advisors' corporate representative  
17 will be binding on the Advisors?

18 A. I do.

19 Q. And that every time I ask you a  
20 question, it will be in your 30(b)(6) capacity as  
21 a witness unless I say otherwise?

22 A. Yes.

23 Q. And can you -- can you testify that  
24 you -- can you confirm that you're prepared to  
25 testify on all of the topics set forth therein?

1 NORRIS

2 A. Yes, I've -- I have spent time  
3 preparing, and I would note that there is a  
4 number of discovery items ongoing. We have not  
5 deposed Mr. Waterhouse. We haven't deposed  
6 Mr. Klos as well as Mr. Seery. And we haven't  
7 had access to Mr. Waterhouse.

8 So with that, yes, I've done the best  
9 that I can in preparing and spoken to a lot of  
10 people and then prepared to answer the questions  
11 to the best of my ability.

12 Q. Okay. Who did you speak to in  
13 preparing?

14 A. Yeah, so obviously spoke with outside  
15 counsel, with Davor and his counterparts. I  
16 spoke with our in-house general counsel, which is  
17 DC Sauter. Spoke with Mr. Dondero. I spoke with  
18 Brian Collins, who's former HR director at  
19 Highland, now Skyview. Spoke with Stephanie  
20 Vitiello who is chief compliance officer of our  
21 Advisors. And also spoke with Kevin Fullmer  
22 who's on our product strategy team. Brian Mitts  
23 over time as well. Brian Mitts, he's involved in  
24 our Advisors. And I think that's most of who I  
25 spoke with.

1 NORRIS

2 Q. Okay. And did you review any  
3 documents in preparing?

4 A. I did, yeah. I reviewed all of the  
5 filings, complaints, responses. I reviewed the  
6 Shared Services Agreements, the Payroll  
7 Reimbursement Agreements. I reviewed your  
8 notice. I reviewed documents that had been  
9 provided in discovery from Highland that my  
10 attorneys provided me. Emails, calculations that  
11 Mr. Klos and Mr. Waterhouse prepared. I reviewed  
12 emails that were responsive that I could try and  
13 find within my system. I searched our document  
14 drive to find responsive documents, and so  
15 reviewing quite a bit of material that I could.

16 Q. Do you have a title at NexPoint?

17 A. I do.

18 Q. What is that title?

19 A. Yeah, executive vice president --

20 Q. Okay.

21 A. -- of NexPoint.

22 Q. How long have you held that title?

23 A. I believe it was in 2018 or 2019 that  
24 I became executive vice president.

25 Q. Okay. So was it like -- was it the

1 NORRIS

2 end of 2018?

3 A. I can't remember the specific date.

4 Q. Okay. Do you have a title at HCMFA?

5 A. Yes, the same, executive vice  
6 president.

7 Q. Okay. And how long have you held  
8 that title?

9 A. Probably the same amount of time.

10 Q. Okay.

11 A. And I also function as -- my  
12 operating role is to lead head of distribution  
13 and chief product strategist. So that's my title  
14 that I also operate under. As an officer of the  
15 Advisors, it's executive vice president.

16 Q. Got it. And who is your employer  
17 now?

18 A. So NexPoint Advisors.

19 Q. So they pay you?

20 A. They do.

21 Q. And who do you -- do you report to  
22 somebody at NexPoint?

23 A. Jim Dondero.

24 Q. Okay. So who controls the Advisors  
25 today?

1 NORRIS

2 A. I think it's been clear in the record  
3 Mr. Dondero owns and has controlling interest in  
4 the Advisors.

5 Q. Okay. And when were the Advisors  
6 formed?

7 A. NexPoint Advisors I believe was 2011,  
8 maybe 2012. And Highland Capital Fund Advisors  
9 was formerly known as Pyxis Capital. Prior to  
10 that name change was Highland Funds Asset  
11 Management. I don't know the specific date, but  
12 it's been over a decade ago that HCMFA was  
13 formed.

14 Q. And James Dondero controlled the  
15 Advisors since they were formed, right?

16 A. I'm not sure on the total history.

17 Q. Were they created at his direction?

18 A. I don't know -- I don't know the  
19 background of the formation other than, you know,  
20 there was -- when they worked for him, there was  
21 a number of independent boards involved. These  
22 Advisors are Advisors of '40 Act funds. There  
23 was a number of counsel in the discussion. So it  
24 was at the direction, I believe, of counsel and  
25 several of the parties involved.

1 NORRIS

2 Q. But James Dondero was involved with  
3 the formation, right?

4 A. I would assume so, but I'm not sure.

5 Q. So the Advisors are registered  
6 investment Advisors, right?

7 A. That's correct.

8 Q. Okay. And so in this role they  
9 provide advisory service to certain funds, right?

10 A. Funds and other entities, yeah.

11 Publicly traded REITs, private REITs, private  
12 placement vehicles. So funds and other vehicles,  
13 investment vehicles.

14 Q. Okay. Can we call these -- they are  
15 retail funds, though, right?

16 A. Largely, yes.

17 Q. So moving forward, can we refer to  
18 these as "the funds"?

19 A. That's fine.

20 Q. And the Advisors provide these  
21 advisory services to the funds pursuant to  
22 certain written agreements, right?

23 A. Correct.

24 Q. And these are investment advisory  
25 agreements, right?

1 NORRIS

2 A. Correct.

3 Q. And these agreements are among the  
4 most important agreements that the Advisors have,  
5 right?

6 A. Yes, among the most important.

7 Q. And the reason for the Advisors'  
8 existence is to service those funds, right?

9 A. Yes.

10 Q. So the funds are the principal source  
11 of the Advisors' revenue, then, right?

12 A. That's correct.

13 Q. Okay. So other than to service the  
14 retail funds, there is no other reason for  
15 Advisors' existence, right?

16 A. The Advisors do have some investments  
17 on their balance sheet, right. So to say the  
18 only reason, there's -- that's the principal  
19 reason.

20 Q. That's the principal one. Okay.

21 So in your individual capacity, are  
22 you an officer of any of the funds?

23 A. I am.

24 Q. Okay. What's your title?

25 A. So for our '40 Act mutual funds,

1 NORRIS

2 closed-end funds, I am the executive vice  
3 president. I don't hold a title for our REITs  
4 which are other entities advised by NexPoint.

5 Q. Okay. But the retail funds that we  
6 talking about which we refer to as the funds, you  
7 hold title with most of them?

8 A. Well, I think -- I told you that the  
9 funds were -- you referred to the vehicles, which  
10 would include the retail funds and other vehicles  
11 that I mentioned: REITs, private placements, and  
12 other investment vehicles you said, well, can we  
13 refer to that as the funds.

14 So the funds is encompassing.

15 There's an aspect of it that's -- the '40 Act  
16 registered funds I'm an officer of. So that's  
17 the funds.

18 Q. Okay. So the retail funds, though,  
19 are the funds that the Advisors provided these  
20 investment services to?

21 A. That's some of what they provided  
22 investment services. They also provide  
23 investment services to REITs, which are publicly  
24 listed, some are private, some are other  
25 vehicles.

1 NORRIS

2 Q. But when you said that the principal  
3 source -- the principal reason that the Advisors  
4 exist is to provide the investment advice to the  
5 funds. I was talking about the retail funds.

6 A. Got it. So if you were talking about  
7 the retail funds, my understanding was you define  
8 that as the funds as a whole, all of those  
9 investment vehicles. So if it's just the retail  
10 funds, there is a lot of other things we provide,  
11 which is publicly traded REITs which is material  
12 part of the assets we manage, there is private  
13 vehicles, there is -- and so there is -- there  
14 is -- but those are all investment vehicles.

15 Q. Okay. But those -- those other  
16 vehicles that you mentioned, the Advisors aren't  
17 performing the services pursuant to those written  
18 contracts, right?

19 A. They are pursuant -- they are using  
20 them -- they are managing them pursuant to  
21 written investment advisory contracts. They are  
22 different contracts. Each entity has an  
23 investment advisory agreement with the Advisors,  
24 one of or both of the Advisors.

25 Q. Okay.

1 NORRIS

2 MS. WINOGRAD: Can we please pull up  
3 Exhibit 54, La Asia.

4 (Exhibit 54 marked for identification.)

5 BY MS. WINOGRAD:

6 Q. Okay. Mr. Norris, do you see this  
7 document?

8 A. I do.

9 Q. Okay. Do you recognize it?

10 A. I do.

11 Q. Is this an original Shared Services  
12 Agreement between Highland and an entity that you  
13 mentioned earlier, Pyxis Capital, LP?

14 MR. RUKAVINA: Objection. Form.

15 A. I don't know if it's an original, but  
16 it is an Investment Advisory Agreement dated  
17 effective December 15th, between Pyxis Capital,  
18 formerly known as Highland Funds Asset  
19 Management, which I waked through earlier when  
20 they changed its name. And I don't know if this  
21 is the original or if it's -- it doesn't say  
22 amended. So it's Shared Services Agreement.

23 BY MS. WINOGRAD:

24 Q. It's a Shared Services Agreement,  
25 though. Okay. And did Pyxis Capital, LP turn

1 NORRIS

2 into HCMFA by name?

3 A. It did, yes, in February 2013, I  
4 believe.

5 MS. WINOGRAD: Okay. La Asia, can we  
6 now put Exhibit 55 on the screen, please?

7 A. And by "turn into" -- you said "turn  
8 into." It's really the name change.

9 BY MS. WINOGRAD:

10 Q. The name change, yeah.

11 A. It was simply a name change.

12 Q. Okay. Thank you for clarifying.

13 (Exhibit 55 marked for identification.)

14 BY MS. WINOGRAD:

15 Q. And then this is an Amended and  
16 Restated Shared Services Agreement between  
17 Highland and Pyxis Capital, LP, right?

18 A. 12th day of September 2012. That's  
19 what it says, yes.

20 Q. And it's effective as of December  
21 15th, 2011, right?

22 A. Yeah, which is just the original date  
23 on the last agreement.

24 Q. Okay.

25 A. Since it's amended and restated.

1 NORRIS

2 MS. WINOGRAD: Okay. And then,

3 La Asia, if we could put up Exhibit 2 now.

4 (Exhibit 2 marked for identification.)

5 BY MS. WINOGRAD:

6 Q. Do you recognize this agreement?

7 A. I do.

8 Q. This is the Second Amended and  
9 Restated Shared Services Agreement between  
10 Highland and HCMFA, right?

11 A. Right.

12 Q. And this is the amendment to the  
13 earlier Shared Services Agreements we just looked  
14 at, right?

15 A. It's a amendment. I don't have  
16 knowledge if there was one in between, but this  
17 is a amendment. Since it says "Second," I would  
18 assume that's the second amended and restated. I  
19 don't know if there was another amended, but this  
20 is the second amended and restated.

21 MS. WINOGRAD: Okay. Can we please  
22 scroll to page 11.

23 BY MS. WINOGRAD:

24 Q. This was signed by James Dondero on  
25 behalf of Highland, right?

1 NORRIS

2 A. It appears so. It says James Dondero  
3 on the signature block.

4 Q. And it's on behalf of HCMFA, right?

5 A. It's by Strand Advisors, its general  
6 partner of HCMFA, yes.

7 Q. But that's Brian Mitts' signature,  
8 right?

9 A. It looks like Brian Mitts' signature,  
10 and it says Brian Mitts there. So I would assume  
11 it's his signature.

12 MS. WINOGRAD: And, La Asia, if we  
13 could just go back to the first page, please.

14 BY MS. WINOGRAD:

15 Q. This Second Amended and Restated  
16 Shared Services Agreement became effective  
17 February 8th of 2013, right?

18 A. Yes, that's what it says. Entered  
19 into to be effective as of the 8th day of  
20 February 2013, which was the time of the name  
21 change, I believe, to Pyxis Capital -- or sorry,  
22 Pyxis Capital to HCMFA.

23 Q. Okay. So under this Shared Services  
24 Agreement, the Advisors who were at HCMFA agreed  
25 to pay Highland for the actual cost incurred from

1 NORRIS

2 certain back and middle office services, right?

3 A. If you want to scroll down and point  
4 to the section --

5 Q. We can go to --

6 A. I believe this was an actual cost  
7 plus a margin amount of 5 percent.

8 Q. Okay. So who -- do you know who  
9 drafted this?

10 A. I don't.

11 Q. Okay. Do you know if this was the  
12 subject of negotiation?

13 A. It was definitely -- when you -- when  
14 you look at all of the Shared Services Agreement,  
15 there was negotiation. As I mentioned, outside  
16 legal counsel involved. There was a Board of  
17 Directors of the retail funds that was involved.  
18 So there was definitely an extensive process that  
19 went into this.

20 In this one in particular, I would  
21 have to look. I don't know if there is any  
22 significant changes between the first and the  
23 second. Maybe you could tell me, but I believe  
24 this one is just the name change on this -- this  
25 document right here.

1 NORRIS

2 Q. Okay. So did HCMFA have its own  
3 counsel in the drafting of this agreement, if  
4 we're just considering the original agreement,  
5 the first one that we looked at?

6 A. There was -- there was -- HCMFA  
7 carried its own Advisor counsel, and the Board of  
8 Directors has an independent counsel. And there  
9 was definitely outside counsel involved.

10 Q. Okay. Did Highland have its own  
11 outside counsel separate from HCMFA's outside  
12 counsel?

13 A. I'm not sure. Again, this was over a  
14 decade ago, and these agreements have been --  
15 they've been in place a very long time. But  
16 there was a lot involved here, and it was an  
17 extensive discussion and conversation.

18 Q. Okay.

19 A. So I -- but, again, the original  
20 agreement for Highland Funds Asset Management was  
21 sometime before 2012, so over a decade ago.

22 MS. WINOGRAD: Okay. La Asia, can we  
23 please look at Exhibit 29.

24 (Exhibit 29 marked for identification.)

25 BY MS. WINOGRAD:

1 NORRIS

2 Q. Okay. Mr. Norris, do you recognize  
3 this document?

4 A. Yes.

5 Q. Can you confirm this is the Shared  
6 Services Agreement between NexPoint and Highland?

7 MR. RUKAVINA: Well, in fairness,  
8 scroll down, Dustin, if you need to, or Hayley  
9 can represent that it's a full and, you know,  
10 correct --

11 THE WITNESS: Yeah, if you could  
12 scroll down. Keep going. Scroll back up --  
13 actually, no, keep going. Yeah.

14 MS. WINOGRAD: Yeah, we can scroll  
15 all the way to -- if we can go to page 11. Yeah,  
16 there we go.

17 BY MS. WINOGRAD:

18 Q. So you agree this was signed by James  
19 Dondero on behalf of both NexPoint and Highland,  
20 right?

21 A. That appears to be his signature and  
22 the signature block looks to -- it says James  
23 Dondero, at least on the Highland one. It  
24 doesn't have his name written, but it does look  
25 like his signature. The bottom one just says

1 NORRIS

2 NexPoint Advisors and it says general partner and  
3 I would say those signatures look pretty close,  
4 but there is no name or title written.

5 Q. Okay. So do you know if this  
6 agreement was subject to any negotiation?

7 A. Yes, just like the HCMFA agreements,  
8 there was detailed discussion, conversations.  
9 And a big aspect of this is the retail board's  
10 consideration was services provided couldn't  
11 be -- between Advisors or affiliated Advisors  
12 couldn't be a profit there. And so a big part of  
13 that negotiation was it needed to be a cost  
14 plus-type arrangement where there was a  
15 reimbursement, not a payment or a profit center  
16 for an affiliated Advisor.

17 Q. So was this the subject of  
18 negotiation, yes or no?

19 A. Yes, there was definitely  
20 negotiation. There was outside counsel involved.  
21 There was extensive discussion. There was an  
22 independent board.

23 Q. Who represent -- did somebody  
24 represent NexPoint when the agreement was  
25 negotiated?

1 NORRIS

2 A. Yes, I believe so --

3 MR. RUKAVINA: Hold on, Dustin. Just  
4 objection. Form.

5 Go ahead and answer.

6 A. I don't know specifically. Again, it  
7 was over a decade ago. But as I mentioned, there  
8 was outside counsel involved. There was board  
9 counsel. There was an independent board.

10 BY MS. WINOGRAD:

11 Q. So do you -- so you don't -- I just  
12 want to make sure I have the answer. So you  
13 don't know if Highland and NexPoint had separate  
14 counsel when this agreement was entered into at  
15 the time?

16 A. Generally -- generally Highland and  
17 the retail advisors had different counsel and  
18 there was an offsetting, but I don't know  
19 specifically on this.

20 Q. You don't know if they did with this  
21 agreement, right?

22 A. I don't know.

23 Q. Okay. So this agreement was amended  
24 in 2018, right?

25 A. I believe that's the case. You have

1 NORRIS

2 an amended 2018 agreement?

3 MS. WINOGRAD: Yeah, La Asia, can we  
4 go ahead and show Exhibit 3, please.

5 (Exhibit 3 marked for identification.)

6 BY MS. WINOGRAD:

7 Q. Okay. Do you recognize this?

8 A. I do.

9 Q. Okay. So this is the Amended and  
10 Restated Shared Services Agreement between  
11 NexPoint and Highland, right?

12 A. It looks to be, yes.

13 Q. Okay. And it's effective January 1st  
14 of 2018, right?

15 A. Dated effective January 1st, 2018.

16 Q. Uh-huh. And this was an amendment to  
17 the Shared Services Agreement that we just looked  
18 at, right?

19 A. It doesn't reference -- whereas the  
20 parties enter into a certain Shared Services  
21 Agreement effective January 1st, the original  
22 agreement.

23 So it appears to be that's the same  
24 agreement.

25 Q. Okay. Great.

1 NORRIS

2 MS. WINOGRAD: Could we scroll to  
3 page 19, please.

4 BY MS. WINOGRAD:

5 Q. Okay. So this was signed by Frank  
6 Waterhouse on behalf of both NexPoint and  
7 Highland, right?

8 A. I don't -- again, just looking at the  
9 signatures, I see Frank's name there but don't  
10 have any evidence, you know, that Frank actually  
11 did sign. In addition, I would also clarify in  
12 all this that we will be deposing Frank. And we  
13 haven't had access to Frank in preparation for  
14 this.

15 Q. Okay. I'm just going to have you try  
16 to listen to the questions I'm asking and answer  
17 those specific questions to the best of your  
18 ability.

19 At the time this agreement was  
20 entered into, was Frank Waterhouse the treasurer  
21 of NexPoint?

22 A. I don't know. It says it on there,  
23 but I'm not -- I'm not certain.

24 Q. Okay. So under the NexPoint -- under  
25 this NexPoint Amended and Restated Shared

1 NORRIS

2 Services Agreement, the Advisors agree to pay  
3 Highland for its middle and back office services  
4 in the amount of \$168,000 per month, right?

5 MR. RUKAVINA: Objection to the  
6 extent it calls for a legal conclusion.

7 A. Can you repeat your question, please.

8 BY MS. WINOGRAD:

9 Q. So the Advisors agreed to pay  
10 Highland \$168,000 per month for Highland's back  
11 and middle office services, right?

12 MR. RUKAVINA: Objection. Legal  
13 conclusion.

14 A. Can you scroll to the section where  
15 it actually shows what was agreed upon?

16 MS. WINOGRAD: La Asia, could we  
17 scroll up a little bit, maybe to the first page.

18 Okay. So go down a little bit. Keep  
19 scrolling, please.

20 Okay. Sorry. Go to the top of  
21 page 4.

22 MR. RUKAVINA: Hayley, can we open  
23 this in the Chat, and then Dustin and I can look  
24 at it and move around? I don't know how that  
25 works.

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2 MS. WINOGRAD: I think for now we'll  
3 just look at the screen so that I can make sure  
4 I'm on the same part as you guys.

5 THE WITNESS: And I might have this  
6 agreement up on my desk. Hold on.

7 MS. CANTY: I've been putting all the  
8 exhibits in the Chat.

9 MR. RUKAVINA: Oh, I know, but I just  
10 don't know how to use it, honestly. I guess I  
11 can click Chat and see.

12 MS. WINOGRAD: Okay. Can you scroll  
13 up a little bit, please. Okay. Just down. I  
14 want to get to Article 2. So the bottom of that  
15 page. Okay. Right there.

16 BY MS. WINOGRAD:

17 Q. Do you see under Article 3,  
18 Section 2.02(a), that says back and middle  
19 office, right?

20 A. It does say back and middle office.

21 Q. Okay. Let's stay there for a second.  
22 And it says "assistance and advise with respect  
23 to back and middle office functions including but  
24 not limited to," and then it goes on to list a  
25 number of services, right, if we scroll down a

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2 little bit?

3 A. Investment research, trade desk  
4 services, yeah, yeah, yeah, it goes on and on,  
5 yes.

6 Q. Okay. So it's fair to say that based  
7 on the terms of the agreement NexPoint was paying  
8 Highland for back and middle office services,  
9 right?

10 A. That was the general -- yes, this was  
11 shared services, primarily back and middle office  
12 services provided to NexPoint Advisors.

13 Q. Okay. How was the \$168,000 a  
14 month -- how was this -- how was this figure of  
15 \$168,000 arrived at?

16 A. Yeah, on this one, our -- in  
17 preparation for this I prepared by, as I  
18 mentioned, talking to a lot of different people.  
19 The people involved in creating that calculation  
20 were Dave Klos and Frank Waterhouse and the  
21 accounting teams under them. And so we haven't  
22 had access to either of them and so we don't --  
23 we don't know specifically on this \$168,000 how  
24 it was calculated.

25 Q. Okay.

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2 A. But we expect to ask Mr. Waterhouse  
3 and Mr. Klos on that in their deposition, and  
4 we'll get more information from them.

5 Q. Okay. So I just want to make sure I  
6 have this straight. So as the 30(b)(6)  
7 representative for NexPoint, you don't understand  
8 how certain terms of this Agreement came into  
9 existence?

10 A. As a 30(b)(6) witness, I did all of  
11 the diligence that I could leading up to this to  
12 determine that, but didn't have access, and  
13 discovery is ongoing. So we do believe that we  
14 will be able to get answers on that --

15 Q. I just asked a yes-or-no question.  
16 So I just wanted to make sure the answer was no,  
17 you didn't know?

18 A. Can you ask your original question  
19 again?

20 Q. I said as a 30(b)(6) witness for  
21 the -- for NexPoint Advisors, you don't  
22 understand how certain terms in this agreement  
23 were arrived at?

24 A. I understand how the terms generally,  
25 but I don't -- again, I did all my research as a

1 NORRIS

2 30(b) (6) witness, and a key component of this is  
3 people involved, we haven't had access to in  
4 preparation.

5 Q. Let me rephrase the question. In  
6 your individual capacity holding the title as  
7 executive vice president of NexPoint, you don't  
8 understand how the \$168,000 figure was arrived at  
9 in this agreement that NexPoint was a party to?

10 A. No, in my individual capacity as  
11 executive vice president, my job was not the  
12 responsibility of calculating payments, doing  
13 back office and middle office services. It  
14 wasn't agreements. It wasn't legal services. In  
15 fact, we had outsourced and relied on Highland  
16 for those specific services. We had outsourced  
17 accounting, legal services, calculation of these  
18 types of things to Highland and relied heavily on  
19 them.

20 I as executive vice president did not  
21 have my own separate accounting team. I don't  
22 have a legal team, and so that was relied on  
23 heavily by --

24 Q. So the -- so the answer is no?

25 MR. RUKAVINA: Objection. Form.

1 NORRIS

2 BY MS. WINOGRAD:

3 Q. You don't know as the executive vice  
4 president how the \$168,000 was arrived at, yes or  
5 no?

6 A. I said exactly that. But as the  
7 executive vice president, that wasn't my  
8 responsibility. I don't know in an individual  
9 capacity how the \$168,000 was calculated.

10 Q. And so there is nobody at NexPoint --  
11 at NexPoint who -- who had any involvement in  
12 arriving at this \$168,000 number?

13 MR. RUKAVINA: Objection. Form.

14 A. So if you look at the officers at  
15 that time, Mr. Waterhouse was involved. We had  
16 outsourced -- again, NexPoint didn't have an  
17 accounting group. And this was created -- this  
18 structure was created for efficiency and  
19 effectiveness utilizing resources. We weren't  
20 paying someone else for additional accounting  
21 services, this was done by Highland and NexPoint  
22 didn't carry its own account back office and  
23 middle office services group to do things like  
24 this.

25 BY MS. WINOGRAD:

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2 Q. Okay. Can I refer to the HCMFA  
3 Shared Services Agreement and the NexPoint Shared  
4 Services Agreement as the Shared Services  
5 Agreement going forward? So if I say that, you  
6 will understand what I mean; I'm talking about  
7 both of them?

8 A. That's fine. I know there are  
9 different provisions of each of those. They  
10 aren't identical. So if you are just referring  
11 to the general, that's great, but I do -- I do  
12 know there are different provisions.

13 Q. Okay. So the Shared Services  
14 Agreements were both in effect as of early 2013,  
15 right?

16 A. And sometime before that, yes, but as  
17 of early 2013, they were both in effect.

18 Q. Okay. So other than to out- -- so  
19 the purpose of these Shared Services Agreements  
20 was to outsource certain middle and back office  
21 functions, right?

22 A. The -- yes, to contract to achieve  
23 certain back office and middle office functions  
24 that the Advisors did not carry in-house.

25 Q. Okay. And other than to outsource

1 NORRIS

2 these certain middle and back office functions,  
3 was there any other purpose of the Shared  
4 Services Agreement?

5 A. I believe the agreements speak for  
6 themselves for the services included and -- you  
7 know, the services that are in there, that was  
8 the purpose of contracting.

9 Q. Can you think of any other purpose?

10 A. Well, here is what I would say -- let  
11 me -- let me go back to the agreement here you  
12 have up. The provision that says back and middle  
13 office, that's 2.02(a). Then you got (b), legal  
14 compliance and risk analysis. Legal compliance  
15 and risk analysis, there is a lot there involved.  
16 Within back office and middle office, it's a very  
17 broad term. But if you look at that, it says  
18 "assistance and advice back and middle office  
19 including but not limited to." And it's a very  
20 broad provision: investment research, trade desk  
21 services --

22 Q. Okay. Is there any service in the  
23 Shared Services Agreement that you would not  
24 categorize as a back and middle office service?

25 A. Again, here you separated out back

1 NORRIS

2 and middle office, legal compliance, risk  
3 analysis. It even says investment research in  
4 back and middle office. So I think they're using  
5 that term as one point. And then now if you can  
6 scroll down past legal compliance, risk analysis.  
7 A lot of people would say that's not just back  
8 office. I think that's probably why it's a  
9 separate function.

10 Q. So I don't care what a lot of people  
11 would say. According to the Advisors, were they  
12 categorizing these functions as back and middle  
13 office services at the time this agreement was in  
14 effect?

15 A. Well, I don't think (b), (c), (d),  
16 and beyond a sub-bullets of (a). So they are  
17 separate categories.

18 Q. Okay. So let's just look at  
19 subsection (c), "Tax, assistance an advice with  
20 respect to tax audit support, tax planning and  
21 tax preparation." Is this a back or middle  
22 office function?

23 A. I think we're splitting hairs here,  
24 and I don't think it matters. But there is no  
25 defining big B, big M, you know, back and middle

1 NORRIS

2 office as a defined term, unless you define  
3 (a) -- again, I'm not an attorney and coming up  
4 with the interpretation of a meaning in a  
5 document, I can't do that.

6 Q. So was the purpose of the Advisors  
7 outsource -- outsourcing these services that are  
8 listed in this agreement, were they to enable the  
9 Advisors to comply with the Advisors' obligations  
10 to the funds?

11 A. They were a help. They weren't to  
12 enable. And maybe backing up, I think it's  
13 important to note even before these agreements  
14 were in place, there was -- these retail advisors  
15 did a lot of this on their own. In fact, I was  
16 an accounting manager for the retail advisors  
17 doing back office services, including a separate  
18 valuation committee. There was essentially a  
19 Chinese wall. And we even had separate floors at  
20 one point.

21 And this allowed them to centralize  
22 it and to share in those thoughts between the  
23 affiliated Advisors. So you weren't duplicating  
24 services. So this enabled -- but this does  
25 enable the Advisors to -- to perform their

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2 function under the 1940 Act of providing the  
3 services needed.

4 So it's outsourcing a portion of  
5 those services that we would otherwise have to  
6 provide. And if there is already a separate  
7 group providing those, this created efficiencies.

8 Q. Let me ask this. If these agreements  
9 were not in effect, would the Advisors still have  
10 been able to fulfill their obligations to the  
11 funds?

12 A. They would have had to do that  
13 through additional employees or other outsourced  
14 Advisors or other outsourced services. We  
15 outsource a number of things today, and we  
16 actually saw this when we transitioned away from  
17 Highland. There was a sub-period, it was only a  
18 week, but where we had to --

19 Q. You've answered my question. So I  
20 would like to move on now, if that's okay.

21 A. Yeah, that's great.

22 Q. Do the Advisors have contracts with  
23 anyone other than the funds to provide services?

24 A. Do our Advisors or -- sorry, can you  
25 repeat the question?

1 NORRIS

2 Q. Okay. So let me ask it this way. So  
3 do the Advisors perform any services to any  
4 entities other than the funds through the Shared  
5 Services Agreements?

6 A. Through these Shared Services  
7 Agreements?

8 Q. Yes.

9 A. These Shared Services Agreements are  
10 services that HCMLP is providing to NexPoint  
11 Advisors and HCMFA.

12 Q. Right. And as you said before, it's  
13 to enable the Advisors to perform their  
14 obligations to the funds, right?

15 A. Correct.

16 Q. So do the Advisors perform any  
17 obligations to any entities other than the funds?

18 A. We're talking just the retail funds?

19 Q. Yes.

20 A. Meaning any services at all?

21 Q. Investment advisory services.

22 A. Yeah, certainly we provide investment  
23 advisory services under advisory contracts with  
24 publicly traded REITs, private REITs, Delaware  
25 statutory trusts that are 1031 DSTs, other

1 NORRIS

2 private placements. You have a couple of  
3 co-invest opportunities. So there is a number of  
4 other vehicles other than the retail funds or the  
5 '40 Act funds that the Advisors -- primarily  
6 NexPoint Advisors provides investment advisory  
7 services.

8 Q. So prior to the execution of the  
9 Shared Services Agreements, were these Advisors  
10 receiving the services set forth in these Shared  
11 Services Agreements from Highland?

12 A. I don't believe so. And as I  
13 mentioned, I was actually involved in a large  
14 part at the Advisors providing services to the  
15 Advisors. We weren't outsourcing. I ran a trade  
16 settlement group as well as an operations group  
17 in accounting. We had a number of -- we actually  
18 had our own traders. We had our own valuation  
19 committee. All these things are listed in here.

20 And so there was some of these  
21 services, and it was phased in over time. And so  
22 there was a handoff and a coordination in order  
23 to reduce the duplication of costs. So...

24 Q. Okay. So they weren't receiving --  
25 the Advisors weren't receiving these services

1 NORRIS

2 prior to the Shared Services Agreements from  
3 Highland?

4 A. I'm not sure specifically on any of  
5 them. Again, it's over a decade ago, and that's  
6 not something that I have an answer for.

7 Q. Okay. So let's move on. Are you  
8 aware that the Advisors filed an administrative  
9 claim against Highland in January of 2021?

10 A. I am.

11 MS. WINOGRAD: Okay. La Asia, can we  
12 pull up Exhibit 11. Scroll down a little bit,  
13 please.

14 (Exhibit 11 marked for identification.)

15 BY MS. WINOGRAD:

16 Q. Okay. Do you recognize this  
17 document?

18 A. I do. And I think I actually have it  
19 on my desk.

20 Q. So this is the administrative claim  
21 filed by the Advisors on January 25th of 2021,  
22 right?

23 A. Yes.

24 Q. So the facts set forth in this  
25 document state the basis for the Advisors' claim

1 NORRIS

2 against Highland, right?

3 A. As known at that time, yes.

4 Q. Is there anything inaccurate in this  
5 document?

6 A. Based on what we knew at that time,  
7 no. And there's been a number of other things we  
8 have learned through discovery, and discovery is  
9 ongoing, as I mentioned. We haven't had the  
10 ability to talk to Mr. Waterhouse or Mr. Klos.  
11 Mr. Seery will be deposed.

12 Q. Okay.

13 A. And so --

14 MS. WINOGRAD: Can we please scroll  
15 to paragraph 16.

16 MR. RUKAVINA: I'll note for the  
17 record that counsel keeps cutting off the witness  
18 before he finishes his answer. So that was an  
19 example.

20 THE WITNESS: True.

21 BY MS. WINOGRAD:

22 Q. Okay. Mr. Norris, looking at  
23 paragraph 16, it says, "Beginning around  
24 July 2020, Mr. Seery directed the Debtor to cease  
25 providing to the Advisors as otherwise

1 NORRIS

2 contemplated under the Shared Services  
3 Agreement" -- SSA stands for Shared Services  
4 Agreement, right?

5 A. Yes, it's defined as Shared Services  
6 Agreement in this document.

7 Q. Okay. And PRAs, and that's defined  
8 as Payroll Reimbursement Agreements, right?

9 A. Correct.

10 Q. Do the Advisors contend that this  
11 statement is accurate?

12 A. Yes.

13 Q. Okay. So in July of 2020, Mr. Seery  
14 was Highland's CEO, correct?

15 A. I'm not sure what his specific title  
16 was in July of 2020.

17 Q. Okay. Can you tell me all of the  
18 facts you're aware of that supports the statement  
19 in paragraph 16 that I just read?

20 A. Yeah. And, again, I would point out  
21 that discovery is ongoing. There is a number of  
22 facts that we hope to be able to obtain from  
23 Mr. Waterhouse and Mr. Klos who haven't been able  
24 to talk to us. Obviously Mr. Klos, because he's  
25 employed by the Debtor or employed by Highland,

1 NORRIS

2 and Mr. Waterhouse because his attorneys haven't  
3 allowed us to talk to him. And so we think we'll  
4 get more information on this.

5 But -- and key here, beginning around  
6 July 2020, there was a number of services.

7 Mr. Seery appeared in August with our retail  
8 board and told them specifically he was not  
9 allowing his employees, his legal team, his front  
10 office investment teams under the Shared Services  
11 and PRAs, the services they normally would  
12 provide, to provide certain services related to  
13 assets that were held across both entities.

14 There were multiple instances where they were no  
15 longer going to be providing services.

16 Historically Highland had provided  
17 our legal services, compliance services. And so  
18 there was a number of things specifically where  
19 they were told do not work on. Those were things  
20 we normally would have help on. That includes --  
21 we had a conflicts committee any time there were  
22 cross-held positions. There were instances where  
23 we had to convene our own investment research.  
24 They had analysts in the front office that  
25 covered these names; we were not. And so we were

1 NORRIS

2 paying for front office services for investments  
3 that our funds were invested in that we could no  
4 longer receive those services for. And we had to  
5 do a number of things in order to plug those  
6 holes. But it was very clear, I even saw an  
7 email from Mr. Seery to the legal team saying  
8 they would be fired if they worked on a certain  
9 matter. That was an entity -- an asset that was  
10 cross-held that -- obviously there is the  
11 contention on Highland's side if there was  
12 conflicts, but those were things that were  
13 provided under the Shared Services Agreements and  
14 PRAs prior that were no longer provided starting  
15 on or around that time.

16 Q. Okay. So that was a lot, so I'm just  
17 going to try to clarify a few things.

18 Can you specify what services you  
19 were referring to? You mentioned legal, but I  
20 just want to make sure I understand the specific  
21 services that you were stating there.

22 A. Yeah. Legal and compliance services.  
23 There was litigation support as well. There was  
24 some items that we were involved in litigation on  
25 that Mr. Surgent, for example, was participating

1 NORRIS

2 in. He had to drop that at Mr. Seery's request  
3 and turn it over to DC Sauter on our end.

4 There is front office investment  
5 services related to certain entities. There was  
6 valuation related to that, valuation services.  
7 There was committees and conflicts-related  
8 committees that were always handled and run by  
9 HCMLP and their legal compliance and investment  
10 professionals.

11 Let me go to the advisory agreement  
12 here, specifically. If you want to pull up -- we  
13 can go line by line if you -- actually, let me  
14 pull up -- I think, again, that's a start. And  
15 there are other items. And, again, discovery is  
16 ongoing, but our position is that there were  
17 significant items that would have normally been  
18 provided during that time period under those  
19 agreements.

20 Q. What -- what exactly did Mr. Seery  
21 say to Highland in July of 2020?

22 A. What did he say to Highland?

23 Q. Uh-huh.

24 A. As in directed to the Debtor?

25 Q. Yeah. So looking at paragraph 16, it

1 NORRIS

2 says, "Beginning around July 2020, Mr. Seery  
3 directed the Debtor to cease providing services."

4 What did he say?

5 A. Yeah, we -- again, discovery is  
6 ongoing. We're going to have a chance to  
7 actually talk to Mr. Seery, too, get his  
8 testimony. But we know that he told the legal  
9 team and the compliance teams to specifically not  
10 work on certain things. He told the investment  
11 professionals as well. He told our traders --  
12 again, our traders cannot do something for us.  
13 They were providing trading services, yet, the  
14 traders were employed by our Advisors. And so --  
15 but there were specifically certain matters.

16 And he told Mr. Sauter that he had  
17 instructed his team not to work on things that  
18 were in opposition to the Debtor, which could be  
19 understandable, but those services also impacted  
20 our investments that they normally would work on  
21 under the Shared Services Agreements. And we had  
22 to find ways to handle that. So...

23 Q. Okay. Did Mr. Seery say all of these  
24 things in person?

25 A. The call that he had with our board

1 NORRIS

2 was he called -- he dialed in. And I don't -- to  
3 the extent of certain individuals, some of it was  
4 in writing; some of it was in person. We haven't  
5 actually seen one of the emails I referred to yet  
6 from your discovery. That one hasn't been  
7 provided maybe because it was to the legal team,  
8 and there is a claim of privilege. But he said  
9 to Mr. Sauter in email specifically that his  
10 legal team was not allowed to work on certain  
11 matters. But there was other items that were  
12 directed in person or by phone.

13 Q. Okay. And as a result of Mr. Seery's  
14 statements, did the Debtor stop providing  
15 services to the Advisors?

16 A. Yes.

17 And I would also point out that there  
18 was a number of things that typically -- and I  
19 mentioned -- another one I thought of is there  
20 were officers of our retail funds that were  
21 employed by HCMLP. That was one of the services.  
22 And we had a number of board meetings and  
23 matters, they just didn't join because there was  
24 a potential conflict. And that included Lauren  
25 Thedford, Dave Klos, Frank Waterhouse. And we

1 NORRIS

2 would typically have had much more support under  
3 the Shared Services Agreement. And that was a  
4 direct result of the concerns they had with even  
5 potentially having an issue with Mr. Seery,  
6 Mr. Klos, and Mr. Waterhouse have told me that  
7 they were concerned that Mr. Seery had said  
8 multiple times that they would have potential  
9 personal liability and be fired if they did  
10 anything that could be detrimental to the estate  
11 or could harm the monetary interest of Highland.

12 So they were -- they were concerned.  
13 And so they understandably were very cautious in  
14 what they were doing and providing, and that  
15 second -- you know, during that entire period  
16 after that on or around July 20th, there was  
17 significant less -- significantly less support  
18 from the Highland group.

19 Q. When did the Advisors first learn  
20 that Highland stopped providing those services?

21 A. There was -- you know, obviously --  
22 in regard to just this or in regard to just  
23 services in general?

24 Q. The services that are referenced in  
25 the second sentence of paragraph 16 that you just

1 NORRIS

2 talked about.

3 A. Yeah. In regard to the Court's  
4 concerns about providing certain services to  
5 non-Advisors resulting in on or around. I think  
6 that's pretty clear, you know, as a result  
7 beginning on or around July 20th.

8 Q. Okay. So the Advisors learned this  
9 on or around July 2020?

10 A. Uh-huh.

11 Q. Okay. So when they found out that  
12 Highland stopped performing these services, what  
13 did the Advisors do?

14 A. Yeah, so we had a number of  
15 discussions, including emails with Mr. Seery,  
16 including discussions with Mr. Waterhouse,  
17 Mr. Klos. We had -- our attorneys had  
18 discussions and conversations with Highland's  
19 attorney. There was an email back and forth  
20 between your firm, Pachulski, and our attorney,  
21 K&L Gates, in October. Our board expressed  
22 concerns when Mr. Seery was on the call in August  
23 directly to him. There was a number of  
24 conversations. Mr. Sauter had ongoing  
25 conversations --

1 NORRIS

2 THE WITNESS: Excuse me, was that --

3 MR. RUKAVINA: My fault.

4 A. There was a number of discussions  
5 regarding services being provided. And granted  
6 at this point -- up until this point, largely  
7 both sides believed there would be an amicable  
8 resolution to the whole bankruptcy, including  
9 Mr. Seery who multiple times even told our board  
10 that he viewed that there would be an amicable  
11 resolution. And so we had a lot of ongoing  
12 discussion throughout all this, and the response  
13 was, sorry, this is, you know, from  
14 Mr. Waterhouse and Mr. Klos, this is what we've  
15 been directed to do; there is an automatic stay.  
16 I've been told we can't do this. We have to be  
17 careful. We're worried about what Mr. Seery will  
18 do. And the direction from Mr. Seery to  
19 Mr. Sauter was what you find in the email and  
20 discussions.

21 BY MS. WINOGRAD:

22 Q. Okay. Just moving forward, I'm going  
23 to ask you to just try to listen really carefully  
24 to what I'm asking and keep your answer  
25 responsive to my question.

1 NORRIS

2 MR. RUKAVINA: And I would ask you  
3 when you find a convenient time for a restroom  
4 break, no rush.

5 THE WITNESS: I could use one, too.

6 MS. WINOGRAD: Sure. Let me just  
7 finish this line of questioning, and then we'll  
8 take a small break. I should be done in a couple  
9 of minutes.

10 BY MS. WINOGRAD:

11 Q. Did the Advisors tell Highland in or  
12 around July of -- July or August of 2020 that  
13 Highland was in breach of the Shared Services  
14 Agreements as a result of Mr. Seery's direction?

15 A. Did we tell Highland that they were  
16 in breach? I'll just reiterate my -- there was a  
17 lot of discussions ongoing about the concerns of  
18 the services and -- including both the Shared  
19 Services and Payroll Reimbursement Agreement.

20 Q. Okay. But there was no discussion  
21 regarding a breach on Highland's part?

22 A. Oh, I think there -- I don't know if  
23 that's a defined term, "breach," but we certainly  
24 clarified that we were paying for services we  
25 were not receiving under both agreements, and

1 NORRIS

2 that was clear throughout.

3 Q. Okay. So as a result of Mr. Seery's  
4 direction, did the Advisors in or around July  
5 of 2020 and August of 2020 make a demand on  
6 Highland that it perform under the Shared  
7 Services Agreements?

8 A. That specifically, we demand you  
9 perform, no. But we sent a letter, an email that  
10 we thought that they were overbilling. And we  
11 actually asked for the invoices --

12 Q. When --

13 A. -- and none were provided to us.

14 What's that?

15 Q. No, I didn't -- I thought you were  
16 done. Continue.

17 A. Yeah, I cut off my train of thought  
18 there. But there was multiple requests  
19 specifically to what they were charging us.  
20 Because if you go back to the Shared Services  
21 Agreement for HCMFA, it was a cost plus 5  
22 percent. If you go to the Payroll Reimbursement  
23 Agreement, it was a reimbursement for actual  
24 employee expenses. So on or around this time, we  
25 started asking for invoices, and we did that over

1 NORRIS

2 many months asking many different people, and  
3 they wouldn't provide it to us because they had  
4 said they couldn't. Mr. Seery wouldn't allow it.  
5 We would ask; they couldn't. And that was DSI,  
6 that was Frank and Dave, that was directly to  
7 Pachulski in multiple -- there was an email and  
8 then there was a letter on December 11th.

9 So there was ongoing discussion  
10 throughout this time period that we were trying  
11 to get to the answer. We didn't know. We had  
12 outsourced this to Highland to take care of, and  
13 we assumed they were billing us for the proper  
14 amount. That's important. We relied on Highland  
15 for what they were billing us. And so we assumed  
16 they are doing less services. Okay. If they are  
17 doing less services, they would bill us for  
18 actual services. We later found out that wasn't  
19 the case.

20 Q. Okay. So other than asking Highland  
21 for invoices, did the Advisors say to Highland in  
22 or around July and August of 2020 that Highland  
23 was not performing under the Shared Services  
24 Agreement?

25 A. Your language there "not performing."

1 NORRIS

2 There were still certain services they were  
3 doing. It wasn't they ceased all services.  
4 Right? And what we did, instead of making a  
5 major issue about it, because we knew there was  
6 an automatic stay, we knew we couldn't terminate  
7 the agreement, what we did is we went and hired  
8 additional employees. We brought Jason Post  
9 in-house. He was a Highland employee. That was  
10 approved by Mr. Seery and Mr. Surgent.

11 We also hired another attorney  
12 because we couldn't provide -- Highland wasn't  
13 providing those services. In addition, we had to  
14 rely on firms like K&L Gates who was Advisor  
15 counsel to provide an up- -- a big increase in  
16 additional services during that time period that  
17 we would have received from Highland.

18 Mr. Sauter -- you want to interrupt?

19 Mr. Sauter, who was hired as a -- an  
20 attorney to work on real estate-related  
21 acquisitions and transactions had to step in and  
22 do a lot of things that Highland's legal and  
23 compliance team would have done, and litigation  
24 support would have done.

25 So there was the understanding that

1 NORRIS

2 we were paying for services that were provided,  
3 not paying for what wasn't provided, which is  
4 what we ended up learning that, one, we paid for  
5 services that weren't provided, which was a  
6 reimbursement on both the PRAs and SSAs.

7 Q. Are you done?

8 A. I am, yeah.

9 MS. WINOGRAD: I'm going to move to  
10 strike all of that because none of it was  
11 responsive to my question.

12 BY MS. WINOGRAD:

13 Q. Did Highland in or around July or  
14 August of 2020 tell the Advi- -- did the Advisors  
15 tell Highland in or around July or August of 2020  
16 that Highland was not performing under the Shared  
17 Services Agreement, yes or no?

18 A. I -- I know you moved to strike, but  
19 I believe that was responsive in that we  
20 provided -- my screen went blank. Sorry. It's  
21 back.

22 All of that was explaining what we  
23 actually notified Highland of and the discussions  
24 we had had regarding the quality of service.

25 Q. Okay. So is there a document that

1 NORRIS

2 reflects the Advisors telling Highland during  
3 this time that Highland was not performing its  
4 obligations under the Shared Services Agreements?

5 A. Again, let's go back to "not  
6 performing their obligation." There is a number  
7 of services they were providing. We acknowledge  
8 that. It's just were we paying for what was  
9 provided, right? Did they -- did they drop all  
10 services? No. They provided a number of  
11 services. And there was a lot of people working  
12 really hard during this time period, a lot of  
13 great -- great people that did great work. But  
14 they were charging us for the full amount of  
15 services that they were providing pre-bankruptcy,  
16 continued to charge us for the same amounts  
17 without adjustments.

18 And on the PRAs, we didn't know that  
19 they continued to charge us for employees that  
20 were no longer hired or employed by Highland. In  
21 fact, many of them weren't even employed at the  
22 filing of the bankruptcy. And so at this point  
23 we were relying on Highland to be paying the  
24 proper amounts and to be billing us the proper  
25 amounts, and they continued to charge for

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2 employees that weren't there.

3 MR. MORRIS: Can I have the question  
4 read back, please?

5 MR. RUKAVINA: I just want to note  
6 again that my witness was interrupted in  
7 mid-sentence.

8 MR. MORRIS: The question was whether  
9 there's anything in writing. So let's have the  
10 question read back, please. These speeches are  
11 getting a little longwinded.

12 MR. RUKAVINA: Yeah, yeah. I'll  
13 answer that. Is Mr. Morris asking the question  
14 now, or is that coming from Hayley.

15 MR. MORRIS: I want to know what the  
16 question was asked, and then I will let  
17 Ms. Winograd take over.

18 THE REPORTER: QUESTION: "So is there a  
19 document that reflects the Advisors  
20 telling Highland during this time that  
21 Highland was not performing its  
22 obligations under the Shared Services  
23 Agreements?"

24 A. There are emails saying that the  
25 services -- we believed that we were paying for

1 NORRIS

2 services not provided. There is an email from  
3 our counsel, K&L Gates, to Pachulski in October.  
4 There is an email in December, December 11th that  
5 was sent requesting documents. There is emails  
6 from myself and DC Sauter to Frank and Dave  
7 trying to understand what we were paying for.  
8 And a response saying that there was a profit  
9 being charged and that they were charging for  
10 employees that were no longer employed. So that  
11 is -- those are the -- those are the written  
12 items. There may be others. Again, we haven't  
13 had a chance to conclude our discovery. We  
14 haven't even spoken to Mr. Waterhouse on this.  
15 He may know of other items. We haven't spoken to  
16 Mr. Klos. We haven't deposed Mr. Klos. But I  
17 think there is a lot of written materials there.

18 BY MS. WINOGRAD:

19 Q. Okay. Mr. Norris, I don't care what  
20 all of these other people know about this. I'm  
21 asking you as a 30(b)(6) witness just for the  
22 record. And so you mentioned that the Advisors  
23 found out that -- that the Debtor stopped  
24 providing these services as of July of 2020, but  
25 then the first time that this was reflected in an

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2 email was October of 2020, as you just said.

3 A. Yeah, I think the -- well, there may  
4 be others, and there was conversations with our  
5 board. I'm sure there's board minutes. There  
6 was conversation with Seery in August where they  
7 expressed concerns.

8 But the key aspect here, even during  
9 this timeframe when we found out, we assumed we  
10 would be paying for actual services provided plus  
11 5 percent. If they stopped providing the  
12 services for legal and compliance, if they  
13 stopped providing certain services, we would  
14 assume they wouldn't be billing us for that. And  
15 so was there a need? Well, sure, certain  
16 services dropped off. We understood that the  
17 Court had concerns. We understood that there was  
18 conflicts that people couldn't be working. We  
19 were understanding. Like, this was a unique  
20 situation. But we didn't assume we would  
21 continue to pay the same amount.

22 You know, if someone's at one point  
23 paying -- providing investment advisory services,  
24 again, the Investment Advisory Agreement -- or  
25 PRAs are a cost plus.

1 NORRIS

2 MR. RUKAVINA: Is this a good point  
3 for a restroom break?

4 MS. WINOGRAD: I have one more  
5 question before we take a restroom break.

6 BY MS. WINOGRAD:

7 Q. If the Advisors knew as early as July  
8 of 2020 that Highland wasn't performing its  
9 obligations, why did it continue to pay for these  
10 services for up until at least October of 2020?

11 A. Yeah, and I'll -- I'll lay this out  
12 again. We didn't pay. We had actually provided  
13 and relied on Highland, HCMLP, and their  
14 accounting services, their legal services to  
15 continue to pay. Highland employees prepared an  
16 invoice, they made a payment, they actually had  
17 access to our bank account, they continued to  
18 make those payments all along the way. We did  
19 not know that we were paying for services that  
20 were not provided. We didn't know at that time  
21 that we were paying for employees that were no  
22 longer employed. Had we known about it and we  
23 started to get an understanding or started to  
24 think that and we asked multiple times, and until  
25 we actually got the data or started to get the

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2 data -- and, in fact, when we found out we were  
3 paying for employees that were no longer  
4 employed, we were shocked, looking at the actual  
5 schedule of who they were charging for.

6 So what were we paying Highland for  
7 if not for accounting back office payments,  
8 accounts payable services, and Highland knew of  
9 the overpayments and continued to process them in  
10 the ordinary course. And Dave and Frank told us  
11 when we asked about it and finally found this  
12 out. They said they discussed it. They even  
13 created a calculation of overpayment. They  
14 discussed it with Highland counsel. They  
15 discussed it with management, and there was  
16 nothing they -- they were told there was nothing  
17 they could do because of the automatic stay.

18 And it's at that point that was the  
19 first time -- I'm not an attorney, and I'm not a  
20 bankruptcy attorney at all -- heard the word  
21 "automatic stay." So there is -- that's a  
22 longwinded way of answering the question.

23 Q. So NexPoint was paying almost  
24 \$200,000 a month, correct?

25 A. The exact number -- NexPoint was

1 NORRIS

2 paying \$252 for -- \$252,000 for payroll  
3 reimbursement amount.

4 Q. No, I'm talking about the -- under  
5 shared services.

6 A. Did you say HCMFA or NexPoint?

7 Q. NexPoint.

8 A. NexPoint I believe the number was  
9 168,000.

10 Q. 168,000. But it didn't know what it  
11 was paying for, right?

12 A. Can you clarify your question?

13 Q. You said that -- earlier you said  
14 Highland was paying, you said when I asked why  
15 the Advisors continued to pay. So NexPoint --  
16 isn't it fair to say, then, that NexPoint was  
17 paying all this money but that they didn't  
18 understand what it was paying for during this  
19 time?

20 A. We thought we knew what we were  
21 paying for, right? And I'll clarify here. There  
22 is a NexPoint agreement that has a stated  
23 \$168,000 as you mention, and there's a HCMFA  
24 agreement that's cost plus. We thought we were  
25 getting the services we bargained for, and we

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2 would assume that Highland would actually bill us  
3 for the actual services provided, which we were  
4 paying around \$300,000 a month for HCMFA Shared  
5 Services Agreement. And it was \$252,000 a month  
6 for NexPoint Advisors PRAs, and the HCMFA PRAs  
7 were \$416,000 a month. We can go through the  
8 calculations on what we believe was the  
9 overpayment during this entire period, but it's,  
10 you know, significant, right? We provided our  
11 calculation, which is utilizing Ms. Hendrix  
12 numbers for payroll that I believe was taken  
13 directly from the payroll system, and that shows  
14 \$7.6 million for paying for employees that were  
15 no longer employed.

16 MS. WINOGRAD: Okay. I'm going to  
17 move to strike all of that. It was unresponsive  
18 to my question. And we're going to now take a  
19 five-minute break. So why don't we come back at  
20 11:45.

21 MR. RUKAVINA: Can we take ten,  
22 Hayley? I've got to make a quick call.

23 MS. WINOGRAD: Sure. Let's come back  
24 at 11:50.

25 MR. RUKAVINA: Thank you.

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2 (A break was taken from 10:39 a.m. to  
3 10:52 a.m.)

4 MS. WINOGRAD: I apologize for  
5 interrupting you before. I didn't intend to, and  
6 I will try to make sure that you finish your  
7 complete answer. At times there was a little  
8 pause and I maybe thought you were done and I got  
9 ahead of myself. But in turn, I would also ask  
10 that you please listen carefully to my questions  
11 and just answer the questions that I asked. Is  
12 that fair?

13 THE WITNESS: Yeah, I -- no, I  
14 appreciate that. And I may well have been  
15 attempting to answer the question the best I can.

16 MS. WINOGRAD: Thank you. All right.  
17 We'll get through this.

18 BY MS. WINOGRAD:

19 Q. So I just want to go back a little  
20 bit about these -- you mentioned that the --  
21 there were certain conflict issues relating to  
22 Mr. Seery's directions to the Debtor, right?

23 A. Uh-huh.

24 Q. One of those issues involved OmniMax,  
25 right?

1 NORRIS

2 A. It did.

3 Q. Were there any other conflicts that  
4 existed other than OmniMax?

5 A. There were a number of -- other  
6 issues, investment -- in addition to OmniMax.

7 Q. Okay. Were there any issues  
8 unrelated to issues of conflicts?

9 A. So I think when you look at -- you  
10 have conflicts, but then it started out with the  
11 OmniMax transaction where no one can work on  
12 this, and then it turned into, well, anything  
13 that could be perceived as being amicable to the  
14 Debtor, and then it turned into most of the  
15 services, legal and compliance, just eventually  
16 stopped. And so it wasn't a, you know,  
17 let's-halt-everything-can't-do-anything. So  
18 outside of conflict, there was a drop-off in the  
19 overall services, I think also in line with what  
20 was going on at this time.

21 Q. Okay. So just to confirm, the -- so  
22 in paragraph 16 that we talked about for a while,  
23 when Mr. Seery directed the Debtor as it's  
24 alleged in the claim, there was -- those  
25 directions related to issues of conflict, right?

1 NORRIS

2 A. Largely, yes. And I would say  
3 particularly at the start, yes.

4 Q. Okay. Did the Advisors inform the  
5 retail boards that there were these issues going  
6 on at the time?

7 A. Yes.

8 Q. Okay. When, exactly, did they inform  
9 them?

10 A. As they were happening. I kind of  
11 laid out that timeframe, but as they were  
12 happening. We had -- I don't remember the  
13 specific number, but it was around 24 retail  
14 board meetings in 2020, and particularly around  
15 this time period, beginning in July and on many  
16 more. And in the first two months of 2021, we  
17 had a significant number of board meetings. So  
18 the board was very aware of all those challenges.  
19 And Mr. Seery had joined the board meeting and  
20 expressed some of those items directly to the  
21 board.

22 Q. Okay. Do the Advisors contend that  
23 the -- that Highland is required to perform  
24 certain services that would have been adverse to  
25 the Debtor?

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2 A. I don't think that's our contention,  
3 right? There would be certainly areas where  
4 there would be conflicts sort of -- yeah, that's  
5 not our contention.

6 Q. Okay. Are you aware that in August  
7 of 2020 the court -- the bankruptcy court issued  
8 an order expressing concern regarding certain  
9 Highland lawyers' conflicts of interest?

10 A. Yeah, I think that's probably what we  
11 referred to in our filing.

12 Q. Uh-huh.

13 A. If you can open it back up, I think  
14 it says -- I don't have it in front of -- that  
15 one right in front of me, but it said including  
16 the Court's statements.

17 Q. Okay. So you are aware, right?

18 A. Yes.

19 Q. Okay.

20 MS. WINOGRAD: So, La Asia, can we  
21 please pull up Exhibit 30.

22 (Exhibit 30 marked for identification.)

23 BY MS. WINOGRAD:

24 Q. This is it the order we just referred  
25 to, right?

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2 A. I don't know. I've never seen the  
3 order.

4 Q. Okay. That's fine. This was the  
5 issued by the bankruptcy court on August 11th,  
6 2020, right?

7 A. Again, I don't know. I'm not an  
8 attorney. I'm still learning what court  
9 documents mean. But it says "order" down below,  
10 and it's signed August 11th.

11 Q. Okay. That's fine.

12 MS. WINOGRAD: La Asia, can we scroll  
13 to page 10, please. There we go.

14 BY MS. WINOGRAD:

15 Q. Do you see here in bold it says, "The  
16 court trusts the Debtor's independent directors  
17 and new CEO are scrutinizing the issue of  
18 in-house lawyers potentially advising both the  
19 Debtor and Highland Non-Debtor Entity targets"?

20 A. Yes.

21 Q. Okay. And it's fair to say when the  
22 Court refers to the new CEO, it's referring to  
23 Mr. Seery, right?

24 A. I'm not -- I'm not familiar with the  
25 structure. So I don't know that that's a safe

1 NORRIS

2 assumption. But if you tell me that's the case,  
3 I'll take your word.

4 Q. Okay. Do the Advisors contend that  
5 Highland breached its duties around July of 2020,  
6 August 2020, by avoiding conflicts pursuant to  
7 this language?

8 A. And I don't believe that's our  
9 stance, right? The approach here is we were  
10 paying for actual services provided, and if they  
11 couldn't provide them because of conflicts, they  
12 should have charged us for them or reduced our  
13 billing. Those services were normally provided.  
14 Even if there is a conflict, you can't just bill  
15 for the cost of something that was not provided.

16 So we don't contend that they should  
17 have been providing services that were, you know,  
18 in conflict to your own state.

19 Q. Okay. Was there anyone at the  
20 Advisors charged with the responsibility of  
21 making sure that the Advisors paid for services  
22 that they were, in fact, receiving?

23 A. We had outsourced that to Highland.  
24 And -- and up until this point, we had believed  
25 that Highland was doing the right thing. And the

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2 agreements are very clear on what the  
3 responsibilities in fair dealing are, and we had  
4 tasked Highland with that.

5 At this time because of the  
6 conflicts, other people started to get more  
7 involved because Highland couldn't perform those  
8 functions. And that's when all of the -- all of  
9 the things we've been talking about came about.

10 So we did not have an accounting team  
11 or someone in-house that was tasked with  
12 verifying the payments. And because we had a  
13 trusted -- we thought trusted group -- and even  
14 then we think that the accounting team had done  
15 the right thing in tracking it, but did not bring  
16 it to our attention, the overpayment, because  
17 they were told by Mr. Seery and their counsel and  
18 DSI that they couldn't do anything about it  
19 because of the automatic stay.

20 Q. Okay. But didn't the accounting team  
21 report to Mr. Waterhouse?

22 A. They did, who was the CFO of Highland  
23 Capital Management, LP.

24 Q. And he was also the treasurer of  
25 NexPoint, right?

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2 A. He was the treasurer of our Advisors,  
3 correct. But he performed those functions and  
4 his accounting function that was outsourced  
5 Highland.

6 Q. Okay. So did -- was Mr. Waterhouse  
7 aware in July of 2020 of these issues of conflict  
8 that we just talked about?

9 A. I mean, we haven't had a chance to  
10 talk to Mr. Waterhouse in preparation for this,  
11 and we'll definitely ask him that in the  
12 deposition. But we don't -- I don't know what  
13 Mr. Waterhouse knew and when.

14 MS. WINOGRAD: Okay. La Asia, can we  
15 show Exhibit 11, please. Yeah, can we scroll to  
16 paragraph 17, please.

17 BY MS. WINOGRAD:

18 Q. Do you see here in the second  
19 sentence of paragraph 17 that it says, "For  
20 example, upon information and belief, the Debtor  
21 has booked a net income from the Shared Services  
22 Agreement of approximately \$10 million since the  
23 petition date?

24 A. I do.

25 Q. Okay. Do the Advisors contend that

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2 this statement is accurate?

3 A. Yeah, so based on at that time of  
4 what we knew and understanding, we were taking  
5 this from information that was relayed from  
6 Mr. Klos and Mr. Waterhouse without seeing  
7 documents. Now that we have received the  
8 discovery items, we believe this number is for  
9 the Shared Services Agreements and PRAs, right,  
10 that there had been profits. We received the  
11 calculation from Mr. Klos that shows \$9.6 million  
12 of annual profits that were reported.

13 Q. Okay. So I just want to make sure I  
14 have this correct. You said that the \$10 million  
15 is actually profits from both the Shared Services  
16 Agreement and the Payroll Reimbursement  
17 Agreement?

18 A. Yeah. And that was based on the  
19 information we had at the time. And that should  
20 be Shared Services Agreements and PRAs.

21 Q. Okay. And the \$10 million is  
22 reflected in a document; is that right?

23 A. Of approximately, yeah. So in  
24 discovery there was a document provided. The  
25 label is ACL025012. This is Intercompany

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2 Services Agreement. And it has a, quote,  
3 "estimated gain on all intercompany agreements of  
4 \$9.6 million."

5 Q. Okay.

6 A. And that is -- in the email that was  
7 an annual amount, and we're talking 16 months in  
8 the bankruptcy filing until the end of the SSAs  
9 and PRAs, so arguably that is higher.

10 Q. Okay. And then it says in the first  
11 sentence of paragraph 17, "The Advisors continued  
12 to pay for those services under the Shared  
13 Services Agreements and PRAs consistent with  
14 historical practice despite the fact that the  
15 Debtor is not providing all of the required  
16 services.

17 So what do the Advisors mean by  
18 historical practice?

19 A. Yeah, the historical practice was we  
20 outsourced payments, calculation of those  
21 payments to Highland, and the actual -- they had  
22 access to our bank accounts to make the actual  
23 wires and approve those. So that continued.

24 The accounting team over there,  
25 Kristin, Dave, Hayley, Frank, they continued to

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2 make those payments. And we assumed that they  
3 were continuing to make the payments based on the  
4 actual services provided.

5 Q. Okay. So before making the payments  
6 each month, did the Advisors take any steps to  
7 ensure that it was paying for service it  
8 received?

9 MR. RUKAVINA: Objection. Form.

10 A. Again, we relied on the provided  
11 services -- and if you look at the Shared  
12 Services Agreement, it's accounts payable, it's  
13 accounting services, and that was what we relied  
14 on.

15 BY MS. WINOGRAD:

16 Q. Okay.

17 A. We didn't -- sorry. Go ahead.

18 Q. No, continue. I thought you were  
19 done.

20 A. I'm good.

21 Q. Okay. So in that same paragraph in  
22 the last sentence, it states that, "The Advisors  
23 have incurred significant additional expenses  
24 obtaining services elsewhere that the Debtor was  
25 required to provide under the Shared Services

1 NORRIS

2 Agreements." Do you see that?

3 A. I do.

4 Q. Okay. What services are the Advisors  
5 referring to here?

6 A. Yeah, so specifically this is legal  
7 and compliance services. And so there were  
8 significant additional costs. I mentioned we had  
9 to hire another attorney who is not -- doesn't do  
10 any litigation-related work or related bankruptcy  
11 work. It's general legal services.

12 And then Jason Post, who was hired  
13 directly to the Advisor, while we continued to  
14 still pay the same dollar amounts even after he  
15 moved over. So those -- those were the  
16 additional expenses.

17 In addition, there were outside legal  
18 expenses. We had to lean heavily on K&L Gates  
19 and Davor and his team. But, you know, we had  
20 considered including those expenses here, the  
21 outside legal expenses, but in order to not waive  
22 privilege, we're not going to try and quantify  
23 those. We quantified what we believe is the cost  
24 for the additional attorney and Mr. Post for the  
25 five months Post -- that they moved over or were

1 NORRIS

2 hired. But those are the significant additional  
3 expenses for the Shared Services Agreements.

4 Q. Okay. And are there documents to  
5 reflect these additional expenses you just talked  
6 about?

7 A. Yeah, we have hiring documents.  
8 There is emails coming from Mr. Surgent to  
9 Mr. Sauter saying that these -- that Jason Post  
10 needs to move over, that it's been approved, the  
11 reason and rationale. And then we have -- it's  
12 just a simple math, what was their pay. And I  
13 confirmed with our payroll team, accounting team  
14 on what the compensation for the additional  
15 attorney from the time he was hired in October  
16 until the end. And then Mr. Post's compensation  
17 during that time as well.

18 Q. Okay. Those documents that you just  
19 mentioned, do you know if those have been  
20 produced to Highland?

21 A. The emails between Mr. Surgent and  
22 Mr. Sauter are in your possession. The  
23 additional payroll items I'm not sure. I can  
24 check with Mr. Rukavina.

25 Q. Uh-huh.

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2 A. And I can talk about the amounts, if  
3 you want, what we assume the amounts to be.

4 Q. Okay. Can we go to paragraph 19,  
5 please.

6 Okay. It says here, "The Advisors  
7 have brought these issues to Mr. Seery's  
8 attention."

9 We kind of touched on this earlier,  
10 but I want to get a little bit more specific.  
11 What issue is this sentence referring to?

12 A. I would -- it's probably in the  
13 paragraphs above. Maybe we scroll back up and  
14 see what "these issues."

15 Q. Are these issues relating to the  
16 conflicts issues?

17 A. I don't see -- the paragraph  
18 immediately above said, "There have also been  
19 similar overpayments under the PRAs. There is a  
20 schedule attached to PRAs of investment  
21 professionals whose compensation would be  
22 reimbursed by the Advisors, but this schedule is  
23 incredibly outdated and includes many  
24 individuals, for example, who departed the Debtor  
25 before the petition date or during the bankruptcy

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2 case. As a result, the Advisors estimate that  
3 since the petition they've overpaid under the  
4 PRAs more than \$9 million."

5 That is certainly an issue that would  
6 be these issues. If you scroll up to 17, maybe  
7 you can scroll up, we can take a look at that.

8 Q. Okay. And so do you know when the  
9 Advisors brought these issues to Mr. Seery's  
10 attention? Was it -- yeah, do you know when?

11 A. There was multiple times throughout  
12 that time period, that late 2020 period.

13 Q. Okay.

14 MS. WINOGRAD: La Asia, can we please  
15 pull up Exhibit 5. Thank you.

16 (Exhibit 5 marked for identification.)

17 BY MS. WINOGRAD:

18 Q. Are you familiar with this document?

19 A. Very high level.

20 Q. Okay. Can you confirm this is a  
21 Sub-Advisory Agreement between Highland and  
22 NexPoint?

23 A. This Sub-Advisory Agreement dated  
24 effective January 1st, entered into between  
25 NexPoint and -- yeah, that looks to be the case.

1 NORRIS

2 Q. Okay.

3 MS. WINOGRAD: La Asia, can we please  
4 scroll to page 13. Thank you.

5 BY MS. WINOGRAD:

6 Q. So this was signed by Frank  
7 Waterhouse on behalf of both Highland and  
8 NexPoint, right?

9 A. Again, that appears to be the case.  
10 Without checking with Mr. Waterhouse, I don't  
11 know that he personally signed, but it does  
12 appear to be his signatures.

13 Q. Okay. And as you just said, this --  
14 this agreement was effective January 1st of 2018,  
15 right?

16 A. We'd have to go back up and look. I  
17 think that was the date.

18 Q. We'll just go back to the first page  
19 just to confirm.

20 A. Yeah, effective as of January 1st,  
21 2018, that's correct.

22 Q. Okay. Do you know the purpose of  
23 this agreement?

24 A. So on this, I do not. Again, this is  
25 one that we have not had access to

1 NORRIS

2 Mr. Waterhouse, who signed this, in understanding  
3 the purpose of this.

4 If you go down reading the agreement,  
5 if you want to scroll down, I believe this was to  
6 provide compensation for certain front office  
7 services.

8 Q. Uh-huh. And are front office  
9 services, are they investment advisory-type  
10 services?

11 A. Again, let's look -- and I'm not as  
12 familiar with this document. I know I had seen  
13 it at some point, but maybe you can scroll down.

14 Q. Yeah, let's go to Section 1. There  
15 we go. It says here, "Limited Scope of  
16 Services." Do you see here in subsection (a) it  
17 says, "Highland is hereby appointed a Sub-Advisor  
18 to the Management Company for the purpose of  
19 assisting the Management Company in managing the  
20 Portfolios of each Account pursuant to the  
21 Management Agreement and Related Agreements"?

22 A. Yes.

23 Q. Okay. So is it fair to say based on  
24 that language that this agreement related to  
25 investment services?

1 NORRIS

2 A. It appears that way, but I'm not  
3 great at interpreting legal documents, because  
4 I'm not an attorney.

5 Q. Okay. So do you know if this was  
6 subject to negotiation?

7 A. I -- I do not know on this one. And  
8 this is one that I asked -- in preparation for  
9 this, I spoke with different people, and I don't  
10 know the process that went into the creation of  
11 this document.

12 MS. WINOGRAD: Okay. Can we go to --  
13 go to page 3, please.

14 BY MS. WINOGRAD:

15 Q. Do you see here where it says  
16 "Compensation" under subsection 2?

17 A. Uh-huh.

18 Q. And it says here, "As compensation  
19 for its performance of its obligations as  
20 Sub-Advisor" -- and Sub-Advisor, can we agree,  
21 refers to Highland?

22 A. Yes.

23 Q. Okay. And then it says, "...the  
24 Sub-Advisor will be entitled to receive a monthly  
25 fee in the amount of \$252,000," right?

1 NORRIS

2 A. Yes.

3 Q. Do you have any idea how this number  
4 was arrived at?

5 A. I do not.

6 Q. Okay.

7 A. Again, we haven't had access to  
8 Mr. Waterhouse and Mr. Klos, who I believe  
9 prepared that. And the number is, I would say,  
10 the exact number that is from the Payroll  
11 Reimbursement Agreement, which was instituted and  
12 may have, I think, took over this agreement  
13 effective the same date, and was applied to a  
14 certain number of employees and their specific  
15 allocations of time and compensation. So I don't  
16 know for certain that that's -- it just happens  
17 to be the same amount, but then the other  
18 agreement came in as effective the same date. We  
19 haven't been able to speak to Mr. Waterhouse to  
20 get the full details, but I -- I think it's based  
21 on the reading here and the number, it is based  
22 on if it were the same exact number of the same  
23 agreement, which was, I think, superseded this,  
24 effectively the compensation for those front  
25 office employees at that time.

1 NORRIS

2 Q. Okay. So it's fair to say, then,  
3 based on this agreement, what we're looking at,  
4 that this is the number that the Advisors paid to  
5 Highland for certain sub-advisory services  
6 rendered by Highland, right?

7 A. Only to the extent this agreement was  
8 in force.

9 Q. Okay. Perfect.

10 Do you know when this agreement was  
11 terminated?

12 A. I don't. And you have the --  
13 actually, I have the PRA for NexPoint Advisors.

14 Q. Okay. We'll -- we'll get to that,  
15 but we -- we can get there in a second. So --

16 A. I think it was -- sorry, go ahead.

17 Q. So just to stick with this specific  
18 agreement for a second before we move on to the  
19 PRAs.

20 So people employed by Highland had  
21 been providing advisory services to the Advisors  
22 since the Advisors were formed, right?

23 A. Sorry, go ahead. Can you repeat  
24 that?

25 Q. Highland employees had been providing

1 NORRIS

2 Advisory services to the Advisors since the  
3 Advisors were formed, right?

4 A. Not necessarily. There was -- like I  
5 mentioned earlier when the Advisors were first  
6 formed, there were a number of employees employed  
7 directly by the Advisors and providing those  
8 services. And, in fact, some of the services  
9 that HCMFA continues to provide has front office  
10 services from certain employees. So there may  
11 have been some services provided prior to that,  
12 but I don't know the extent.

13 Q. Okay. That's fine.

14 MS. WINOGRAD: La Asia, can you pull  
15 up Exhibit 6.

16 (Exhibit 6 marked for identification.)

17 MS. WINOGRAD: Okay. Thanks.

18 BY MS. WINOGRAD:

19 Q. Are you familiar with this document?

20 A. I am.

21 Q. Okay. This is a Payroll  
22 Reimbursement Agreement between Highland and  
23 NexPoint, right?

24 A. It is.

25 Q. And it's entered into May 1st of

1 NORRIS

2 2018, right?

3 A. Yes. Effective January 1st, 2018.

4 Q. Great. That was my next question.

5 Okay. And this was four months after the  
6 Sub-Advisory Agreement became effective, right?

7 A. That is correct.

8 MS. WINOGRAD: Okay. Can we go to  
9 page pdf 526, please.

10 BY MS. WINOGRAD:

11 Q. Does that look like Frank  
12 Waterhouse's signature to you?

13 A. I would assume so, but I would be  
14 speculating. There is no name or title there,  
15 but --

16 Q. That's fine.

17 A. -- it looks similar to the other ones  
18 we saw.

19 Q. Do you know who drafted this Payroll  
20 Reimbursement Agreement?

21 A. I do not.

22 Q. Okay. So the Payroll Reimbursement  
23 Agreement provided that the Advisors would pay  
24 Highland for Highland providing certain  
25 sub-advisory -- certain advisory investment

1 NORRIS

2 services, right?

3 A. It would not pay. It would be a  
4 reimbursement. And this, again, gets back to a  
5 point I made earlier that this was an important  
6 point, we couldn't be a profit center. This is a  
7 reimbursement for actual expenditures for -- if  
8 you go to the top, I think you can see the  
9 provision. It's dual employees -- maybe you can  
10 scroll up to --

11 Q. Let's go to page 1, Section A,  
12 because that spells it out.

13 A. Yeah: Dual employees who are  
14 providing investment and -- who are dual  
15 employees and providing investment advisory  
16 services.

17 And, again, it's a reimbursement for  
18 the actual cost, which historically -- and if you  
19 see in the appendix it's what percentage of their  
20 time was allocated to services provided, whether  
21 a dual employee and providing investment advisory  
22 services.

23 Q. Okay. Fair enough.

24 So if we look at recital Section A,  
25 it says "HCMLP" -- which you agree refers to

1 NORRIS

2 Highland, right?

3 A. Yes.

4 Q. -- "will seek reimbursement from  
5 NexPoint for the cost of certain employees who  
6 were dual employees of HCMLP and NexPoint and who  
7 provide advice to registered investment companies  
8 advised by NexPoint under the direction and  
9 supervision of NexPoint as more fully described  
10 in this Agreement below."

11 So it's fair to say that these were  
12 similar types of services that Highland was  
13 providing under the terms of the Sub-Advisory  
14 Agreement, right?

15 A. Again, I'm not certain. I believe  
16 this was to supersede that. And the  
17 understanding was the way that was drafted was  
18 not appropriate, given the nature of the '40 Act  
19 funds they were serving. But, again, we need to  
20 talk to Mr. Waterhouse for the intent or the  
21 reason for the two different agreements. But our  
22 understanding was this agreement, the other one  
23 was drafted, and this is to replace that. And  
24 that's why it's effective the same date and has  
25 the same amounts. But it is not sub-advisory

1 NORRIS

2 services but reimbursement for actual costs.

3 Q. Okay. So dual employees, as that is  
4 set forth in the agreement of Highland, were  
5 providing these investment services, right?

6 A. Yes. Dual, and there may have been  
7 some dual employees that weren't providing --  
8 weren't providing investment services. So this  
9 was they had to be a dual employee and providing  
10 services.

11 Q. Right. Dual employees that were  
12 providing -- the employees that worked at  
13 Highland that were providing these services under  
14 this agreement, they were called dual employees?

15 A. Well, they are in this agreement  
16 because they are dual employees, right. If they  
17 are in that appendix, they were dual employees,  
18 not the other way around.

19 MS. WINOGRAD: Okay. Can we go to  
20 page 7, please.

21 BY MS. WINOGRAD:

22 Q. Okay. This is an Exhibit A to the  
23 Payroll Reimbursement Agreement, right?

24 A. It is.

25 Q. Okay. And this is the list of the

1 NORRIS

2 dual employees we just talked about, right?

3 A. No. This is a starting point of the  
4 dual employees as of January 1st, 2018. And  
5 these were the percentages at that time of the  
6 dual employees.

7 A dual employee, as you note, is an  
8 employee that is employed, and in order to be an  
9 employee, has to be employed and providing  
10 services. So we're talking postpetition claim  
11 here. Almost -- more than half of these  
12 employees weren't even employed as of the  
13 petition date of the bankruptcy filing date.

14 Q. Okay.

15 A. But -- go ahead.

16 Q. But this -- these are the employees  
17 that as of the time this agreement was entered  
18 into who were -- who were supposed to provide  
19 these services, right?

20 A. Yes, that's correct.

21 Q. Okay.

22 A. And I would note subject -- at that  
23 time, it's a point in time. So -- well, go  
24 ahead. Go ahead.

25 MS. WINOGRAD: Can we -- can we go

1 NORRIS

2 back to -- okay. Let's go to -- let's stay on  
3 this page, actually.

4 BY MS. WINOGRAD:

5 Q. Do you see Matthew Gray here?

6 A. I do.

7 Q. Okay. And Matthew -- so what do  
8 these percentage allocations mean in simple  
9 terms?

10 A. Yeah, so I -- and agree it may  
11 specify it, but it's the percentage of their time  
12 that was spent providing investment advisory  
13 services to this particular Advisor.

14 Q. Okay.

15 A. Matthew Gray, for example, was  
16 employed by HCMLP. He worked for the  
17 organization. He did a lot of work on different  
18 entities including HCMLP, but 9 percent of his  
19 time for his allocation of costs were allocated  
20 to NexPoint Advisors as of this point in time.

21 MS. WINOGRAD: Okay. Could we scroll  
22 to Section 3.01 -- I'm sorry, actually -- yeah.

23 BY MS. WINOGRAD:

24 Q. So it says here, "Actual Cost  
25 Allocation. The Actual Cost of any Dual Employee

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1 NORRIS

2 relating to the investment advisory services  
3 provided to a Fund shall be allocated based on  
4 the Allocation Percentage. For purposes of this  
5 Agreement, 'Allocation Percentage' means the  
6 Parties' good faith determination of the  
7 percentage of each Dual Employee's aggregate  
8 hours worked during a quarter that were spent on  
9 NexPoint matters." Do you see that?

10 A. I do.

11                   Q. So was there a way for the Advisors  
12 to track the aggregate amount of hours that an  
13 employee worked during a quarter?

14                   A. We would -- and, again, this says the  
15 parties' determination. So Highland as well was  
16 responsible, and they were tasked with seeking  
17 reimbursement, right? So they had a process. I  
18 don't know exactly the process.

19 And, again, we haven't deposed  
20 Mr. Waterhouse and Mr. Klos, who would have been  
21 performing this. So this is the service --  
22 accounting services we outsourced or leaned on  
23 Highland to provide, but also they would know the  
24 percentage of time that their employees spend.

25 And clearly in the appendix they have

1 NORRIS

2 an allocated percentage. And -- so there -- I  
3 assume there is a mechanism and there was a  
4 mechanism, and I would even go to Mr. Klos'  
5 calculation that he did for the overpayment that  
6 we received in discovery.

7 He actually has an amount of actual  
8 investment support provided as of that point in  
9 time in late 2019 -- or late 2020, for the year  
10 period, with that. So it appears they have a  
11 methodology, but we'll learn more of that from  
12 Mr. Klos and Mr. Waterhouse.

13 Q. Okay. And just to kind of remind you  
14 to answer the questions I've asked. I asked if  
15 the Advisors had a way to know, but it sounds  
16 like your answer is no, right?

17 A. Specifically, again, these were  
18 employees of HCMLP. We didn't have access to  
19 their specific timesheets or their process. So  
20 we didn't -- no, we, again, we relied on Highland  
21 for that.

22 Q. Okay. So did Highland decide on  
23 these allocation percentages?

24 A. Again, as -- on this one in  
25 particular, the actual details around how these

1 NORRIS

2 numbers were calculated, we don't know. Based on  
3 the information that I was able to glean as a  
4 30(b)(6) witness from many discussions, we don't  
5 know. We are going to be relying -- not relying.  
6 We're looking forward to learning that from  
7 Mr. Klos and Mr. Waterhouse, but the actual  
8 specifics, we don't know.

9 Q. Okay. And if we go back to actual  
10 costs, if we just scroll down a little bit.

11 MS. WINOGRAD: La Asia, if we could  
12 scroll down a tiny bit. Thank you. Up a little  
13 bit. It's in the definitions section.

14 BY MS. WINOGRAD:

15 Q. So there it is, yeah. So it says  
16 here the actual costs -- it says, '"Actual Cost'  
17 means, with respect to any period hereunder, the  
18 actual costs and expenses caused by, incurred or  
19 otherwise arising from or relating to each Dual  
20 Employee, in each case during such period.

21 Absent any changes to employee reimbursement, as  
22 set forth in Section 2.02, such costs and  
23 expenses are equal to \$252,000 per month."

24 Right?

25 A. That's what it says.

1 NORRIS

2 Q. Okay. And so as we just talked  
3 about, this is the same number that was reflected  
4 in the Sub-Advisory Agreement, right?

5 A. It is.

6 Q. Okay. So -- so it says here, "Absent  
7 any changes to employee reimbursement as set  
8 forth in Section 2.02, such cost and expenses are  
9 equal to \$252,000 a month." That statement makes  
10 sense to you, right?

11 A. Does it make sense?

12 Q. If you -- okay. Let me rephrase it.

13 Do you see that, what I just read?

14 A. I do.

15 Q. Okay. So it mentions Section 2.02.

16 MS. WINOGRAD: La Asia, can we scroll  
17 to Section 2.02, please, to just try to get  
18 context for what that sentence means.

19 BY MS. WINOGRAD:

20 Q. So now we see under Article II it  
21 says -- under Section 2.02, "Changes to Employee  
22 Reimbursement. During the Term, the Parties may  
23 agree to modify the terms and conditions of  
24 NexPoint's reimbursement in order to reflect new  
25 procedures or processes, including modifying the

1 NORRIS

2 Allocation Percentage (defined below) applicable  
3 to such Dual Employee to reflect the then current  
4 fair market value of each such Dual Employee's  
5 employment. The Parties will negotiate in good  
6 faith the terms of such modification."

7 Do you see that paragraph?

8 A. I do.

9 Q. Okay. So at any time that this  
10 Payroll Reimbursement Agreement was in effect,  
11 did anyone at the Advisors seek to modify the  
12 terms and conditions of the \$252,000  
13 reimbursement?

14 A. Yeah, there was an amendment done in  
15 2018. And the way we understand it, the intent  
16 of this was a reimbursement for actual employee.  
17 And to make that easier, instead of a monthly  
18 true-up with trying to calculate everyone's time,  
19 there was an annual amount. And the procedures  
20 then were essentially changed. In 2018, there  
21 was an annual true-up done in December. And I  
22 learned this from talking to Dave Klos and Frank  
23 Waterhouse when they first told us about the  
24 amount they had continued to charge throughout  
25 the postpetition period and why they didn't

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1 NORRIS  
2 modify them and why there was no true-up done,  
3 that the function was at the end of the year they  
4 ran the numbers, they figured out the  
5 allocations, and we provided, I believe, in  
6 discovery the amendments that were done in  
7 December 2018. And at that point we actually  
8 owed Highland and paid it to Highland an amount  
9 for additional services. And so there was no  
10 true-up done in 2019. There was no true-up done  
11 in 2020. Our view is that it should have been  
12 done. And, in fact, the parties will negotiate  
13 in good faith as a key part of this here, the  
14 terms of any modification.

15                   Similarly in 4.02, I think it says  
16        should either party determine a change to  
17        employee reimbursement is appropriate, we do know  
18        that Mr. Klos and Mr. Waterhouse knew and  
19        calculated and provided -- in discovery you  
20        provided us their overpayment calculations. And  
21        in the email Mr. -- I have it right here, it even  
22        says that they knew about this the year before  
23        and they were just rolling forward the analysis  
24        done for DSI the previous fall.

25 So there was clear knowledge by the

1 NORRIS

2 Advisors -- by Highland, and they knew the  
3 intents of this was the reimbursement, and they  
4 did not modify in good faith or even tell us  
5 until we found out about it. And when we found  
6 out about it, they specifically said they  
7 couldn't even provide the calculation.

8 Q. Okay. So just backing up for a  
9 second, because, again, I'm just trying to  
10 understand this, so I want to take this one step  
11 at a time.

12 A. Yes.

13 Q. So Section 2.02 says -- again, it  
14 says that during the term, the parties may agree  
15 to modify the terms in order to reflect new  
16 procedures or processes, including the  
17 modification of the allocation percentage.

18 And you answered that there was this  
19 amendment done later in 2018. Do I have that  
20 right?

21 A. Yes, December 2018, there was an  
22 amendment to each payroll reimbursement for each  
23 HCMFA and NexPoint separately.

24 Q. And was this amendment a result of  
25 the Advisors invoking their right pursuant to

1 NORRIS

2 Section 4.02 which you just talked about?

3 A. Again, on this, this was based on our  
4 ability to understand why the amendment was made  
5 and to what extent. We don't have an answer.

6 Again, we haven't completed discovery with  
7 Mr. Waterhouse and Mr. Klos. They were the ones  
8 involved in this, and so we look forward to  
9 hearing their discussion on this.

10 Q. Okay.

11 A. But our understanding was that -- and  
12 our understanding is that was done to be able to  
13 out -- to actually come up with the proper  
14 reimbursement. Because, again, the agreement is  
15 a reimbursement of actual costs of employees that  
16 were dual employees providing investment advisory  
17 services. So there is a calculation done to  
18 determine if there needs to be a true-up.

19 Q. Okay. So let me phrase it this way.

20 During the time that this agreement was  
21 effective, did the parties ever -- did NexPoint  
22 ever -- did the -- did NexPoint ever notify  
23 Highland on the last business day of any calendar  
24 month that a change to employee reimbursement  
25 needed to occur?

1 NORRIS

2           A. Again, key aspect here: The Highland  
3 employees were the ones tasked with creating the  
4 calculations, making the payments. And our  
5 understanding is they were reimbursing for actual  
6 employees. And so we did not understand that  
7 they were not. And as soon as we did, we asked  
8 for a modification, right? We asked for a  
9 calculation. And I should clarify, not even  
10 asking for a modification. We -- we began to --  
11 I should say we asked on several occasions for  
12 the actual calculation of who they were even  
13 paying for. They wouldn't provide that to us.

14           We asked DSI, we asked Highland, we  
15 asked your counsel for the calculations of who  
16 they were charging for which employee, and the  
17 answer eventually from your counsel was, maybe  
18 you need to file an admin claim. And so we filed  
19 an admin claim. And so we filed an admin claim.  
20 We sought out remedies at that point once we had  
21 found out. But there was -- yeah, that's --

22           Q. When were you -- when is the first  
23 time the Advisors asked for that calculation?

24           A. So we found out about this in late  
25 November, early December. And me and DC Sauter

1 NORRIS  
2 asked Frank and Dave for the calculation, and  
3 they said that they will check, but they would  
4 not -- didn't think that Seery would allow it.  
5 They said they couldn't provide it. We then  
6 asked for it again. We asked for it in a letter  
7 on December 11th. We asked for it again in  
8 January multiple times from DSI, in talking to  
9 Fred Caruso, Brad Sharp. We asked again multiple  
10 times from Dave Klos and Brian Collins and Frank  
11 Waterhouse in January.

12 So once we found out and were frankly  
13 shocked that we were paying for these  
14 employees -- and Dave and Frank said they had  
15 talked to counsel, they had talked to Highland's  
16 counsel, and the answer was, we can't do anything  
17 about it because of the automatic stay.

18                           And at that point we couldn't just  
19 march in and say, "Well, we're just changing the  
20 amount," because we didn't want to disrupt the  
21 challenges that we were already facing with the  
22 court, right? There was an automatic stay. And  
23 so we sought through our proper remedies an admin  
24 claim, and that's where we sit today.

25 Q. Okay. So just coming back to the

1 NORRIS

2 original question, you said -- and I just want to  
3 make sure I have this right -- you said before  
4 late October, early November, before this time  
5 NexPoint had not -- had not tried to change the  
6 conditions of NexPoint's reimbursement under this  
7 agreement?

8 A. Up until this point, we assumed  
9 incorrectly that Highland was doing the right  
10 thing and reimbursing for actual costs. What  
11 were we paying them for as our accounting and AP  
12 services, as our legal services to be able to  
13 perform under agreement and to act in good faith.  
14 So, no, we didn't know. We assumed that they  
15 were paying the actual allocations, not the  
16 allocations from January 1st, 2018, for  
17 75 percent of the employees that are no longer  
18 even employed. Partners, I would say.

19 If you look at Andrew Parmentier, he  
20 was a partner who was fired before the bankruptcy  
21 filing; yet, we were paying 40 percent of his  
22 compensation from NexPoint Advisors and  
23 40 percent from HCMFA, all the way through  
24 postbankruptcy up until the end of the agreement.

25 So we didn't know, and once we knew,

1 NORRIS

2 we went through our normal remedies of an admin  
3 claim.

4 MS. WINOGRAD: Okay. La Asia, can  
5 you pull up Exhibit 8.

6 (Exhibit 8 marked for identification.)

7 BY MS. WINOGRAD:

8 Q. Okay. Are you familiar with what  
9 this document --

10 A. I am.

11 Q. Okay. This is the payroll  
12 reimbursement between Highland and HCMFA, right?

13 A. It is.

14 Q. And it's effective as of January 1st,  
15 2018, right?

16 A. Correct.

17 Q. And it was entered into May 1st of  
18 2018, right?

19 A. I don't know if it was May -- oh,  
20 yeah, first day of May 2018, effective  
21 January 1st, 2018, correct.

22 MS. WINOGRAD: Okay. And can we  
23 scroll to page 5 and 6, please. I think it's  
24 last part of 5, beginning of 6. Thanks.

25 BY MS. WINOGRAD:

1 NORRIS

2 Q. So this agreement was signed, right?

3 A. It was signed, yes.

4 Q. Okay. Do you know who drafted this  
5 agreement?

6 A. I don't.

7 Q. Okay. So pursuant to this  
8 agreement -- so let's go back to Recital A, so we  
9 have the terms in front of us.

10 So pursuant to Recital A, Highland  
11 employees were to provide investment advisory  
12 services to HCMFA, right?

13 A. Sorry, can you repeat the question?

14 Q. So pursuant to subsection "A,"  
15 Highland was to provide investment advisory  
16 services to HCMFA as set forth -- under the  
17 direction and supervision of HCMFA as set forth  
18 in the agreement, right?

19 A. I think "A" speaks for itself, but  
20 I -- and it says -- well, I don't know that this  
21 agreement mandates they perform the services, but  
22 it says we -- HCMLP will seek reimbursement for  
23 such services.

24 MS. WINOGRAD: Okay. Can we --

25 BY MS. WINOGRAD:

1 NORRIS

2 Q. Well, backing up a second, do you  
3 know if this agreement was negotiated?

4 A. Same answer on this one as the other  
5 one is we don't know. We weren't -- based on the  
6 conversations I had, and we're going to be -- we  
7 haven't been able to talk to Mr. Waterhouse  
8 regarding this and nor have been able to talk to  
9 Mr. Klos, and we believe that they have more  
10 information.

11 MS. WINOGRAD: Okay. Could we scroll  
12 to page 7.

13 BY MS. WINOGRAD:

14 Q. Okay. So similar to the NexPoint PRA  
15 reimbursement agreement we just looked at, at  
16 times I might say PRA, but I'm referring to the  
17 Payroll Reimbursement Agreement.

18 A. Uh-huh.

19 Q. These percentage allocations reflect  
20 how much time a particular Highland employee was  
21 to work on HCMFA matters, right?

22 A. Again, my answer for NexPoint would  
23 apply here, but you said the time they were to.  
24 I would say that was at the time -- again, I  
25 don't know how these numbers were calculated

1 NORRIS

2 specifically, but based on the agreement, this  
3 was laid out that those were the percentages of  
4 their time being spent on services provided as a  
5 dual employee for providing advice under this  
6 agreement.

7 Q. Okay. And did HCMFA ever seek to  
8 change the reimbursement amount under this  
9 agreement?

10 A. I would use my -- go back to my same  
11 exact answer I used for NexPoint Advisors. Same  
12 answer applies for both agreements.

13 Q. Okay. And do you know who decided  
14 these allocations? Was that Highland, also?

15 A. I don't know.

16 Q. Okay. Can I refer to the two -- like  
17 the HCMFA Payroll Reimbursement Agreement and the  
18 NexPoint one as just the Payroll Reimbursement  
19 Agreements unless I specify which one it is?

20 A. Yes.

21 Q. So at the time the Advisors entered  
22 into the Payroll Reimbursement Agreements, the  
23 Shared Services Agreement had been in effect for  
24 about five years, right?

25 A. At least, or approximately, yeah.

1 NORRIS

2 Q. And during those five years, were the  
3 Advisors receiving investment advisory  
4 services -- any investment advisory services from  
5 Highland?

6 A. I'm not certain, but maybe you could  
7 pull up the Shared Services Agreements. I think  
8 one of them we looked at earlier I think talks  
9 about investment services, and so those services  
10 may have been provided under the Shared Services  
11 Agreement. I'm trying to --

12 Q. Okay.

13 A. I know we were looking at one, and  
14 one of those under the middle and back office  
15 said investment services, investment advisory  
16 services. But so -- let me go back to your  
17 question. I don't know the answer.

18 Q. Okay. And that's fine.

19 Do you know who made the decision to  
20 enter into the PRAs or Payroll Reimbursement  
21 Agreements?

22 A. We don't. Based on my analysis and  
23 discussion with various people, no one had any  
24 recollection of -- of that. And so, again, you  
25 know, we're going to talk to Frank Waterhouse.

1 NORRIS

2 We haven't had access to him, and Dave Klos, who  
3 we believe were very involved in preparation and  
4 creation of these.

5 Q. Okay. So do you know -- do you know  
6 who decided who these employees would be that are  
7 listed here?

8 A. I don't, but just based on the  
9 agreement and my understanding of the intent, it  
10 was to list all of the dual employees that were  
11 providing investment advisory services to  
12 retail advisors. And having worked here, looking  
13 at the list, this looks like a comprehensive list  
14 of the individuals that were providing investment  
15 advisory services to the retail advisors at a --  
16 not their whole time but as a percentage of their  
17 time. And I have interacted with each one of  
18 them and knew each one of them and would say this  
19 is a reasonable list of individuals that were  
20 providing investment advisory services --  
21 employed by Highland and providing investment  
22 advisory services and acting as a dual employee  
23 of HCMLP and the Advisors.

24 Q. Okay. So just to sort that out a  
25 little bit, does that mean that, for instance,

1 NORRIS

2 when Highland was providing investment advisory  
3 services under the Sub-Advisory Agreement, is it  
4 fair to say that these are the people that would  
5 have been providing those services under the  
6 Sub-Advisory Agreement, also?

7 A. They both have the same effective  
8 date. So I don't know -- I -- going back to my  
9 other answer, I don't know the origin or the  
10 creation of that Sub-Advisory Agreement, but  
11 these people -- this is the same effective date,  
12 and this says as of January 1st, 2018. So that  
13 appears reasonable.

14 Q. Uh-huh. So -- and this is just me  
15 wanting to clarify what you said before. So the  
16 Advisors -- did the Advisors ever try to figure  
17 out whether the dual employees were allocating  
18 their time pursuant to this Agreement?

19 A. I don't know.

20 Q. Okay.

21 A. And I need to go back. HCMLP will  
22 seek reimbursement, right? A reimbursement is on  
23 their end telling us what the actual costs were.  
24 And we had a great relationship. We were  
25 affiliates. We relied on Highland. We trusted

1 NORRIS

2 their calculations and judgment. And it was  
3 their responsibility to seek reimbursement of  
4 actual costs of what the employees who were, one,  
5 dual employees employed, and, two, providing  
6 investment advisory services to us.

7 Q. Okay. Let's look at an example that  
8 might just make things a little bit more  
9 concrete. Let's look at Nathan Burns.

10 A. Yeah.

11 Q. You've heard his name, right?

12 A. I have. I've worked with him for  
13 years.

14 Q. Great. So he's listed as a dual  
15 employee on both of the PRAs, right?

16 A. Yeah.

17 Q. Okay. So pursuant to the NexPoint  
18 PRA which we're looking at, he was -- at the time  
19 this was executed --

20 A. This is the HCMFA PRA, sorry to  
21 interrupt, but you said NexPoint.

22 Q. Oh, got it. Okay. So, yeah, you're  
23 right. So I did mean to say NexPoint.

24 So pursuant to NexPoint's -- the  
25 NexPoint PRA, he was supposed to allocate

1 NORRIS

2 70 percent of the time working for NexPoint,  
3 right?

4 A. I see that. I got it here.

5 Q. So the --

6 A. No, no, going back. It wasn't he was  
7 supposed to, that's the time he would have been  
8 spending on NexPoint Advisors work.

9 Q. That's -- okay. That's fair enough.

10 Thank you for the clarification.

11 And so pursuant to the HCMFA PRA  
12 which we're looking at right now, he was --  
13 Nathan Burns was allocating 10 percent of his  
14 time to HCMFA matters, right?

15 A. So he wasn't allocating it, he was  
16 working that amount of time, assuming Highland's  
17 numbers are correct here. But they are  
18 allocating his time that that's what he worked.

19 Q. Okay. So based on these numbers,  
20 Highland was allocating 10 percent of his time?

21 A. Yeah.

22 Q. Okay. Was anyone at the Advisors  
23 charged with the responsibility of making sure  
24 that Nathan allocated 70 percent of his time to  
25 NexPoint matters?

1 NORRIS

2 A. Again, this is -- he wasn't -- he  
3 didn't have to allocate. This is the calculation  
4 of what his time allocation was. But I can tell  
5 you just sitting here today, I can look at the  
6 numbers and I knew what people did and I  
7 interacted with them. Nate Burns' was -- primary  
8 job was Nexpoint Capital, Inc., our BDC, the  
9 healthcare-focused BDC. That's advised by  
10 NexPoint Advisors. That's 70 percent of Nate's  
11 time. So very reasonable.

12 We knew what these people did. It's  
13 not a big organization. But to answer your  
14 question, did we have someone at the Advisors  
15 responsible for ensuring their time was spent  
16 here? No, this is HCMLP responsible for seeking  
17 reimbursement.

18 Q. Okay.

19 A. So that's them -- they need to --  
20 they are responsible for seeking reimbursement.

21 Q. Are you familiar with a former HCMFA  
22 employee named Andrew, I think, Hilgenbrink?

23 A. I am.

24 Q. Okay.

25 A. Sorry. Let me correct you here.

1 NORRIS

2 Andy was not an HCMLP employee, my understanding,  
3 he was an HCMFA employee.

4 Q. Oh, yeah. I thought I said HCMFA.

5 A. Maybe you did. Maybe you did.

6 Q. Okay. So are you aware that Andrew  
7 worked for HCMFA as a portfolio manager of a fund  
8 managed by the Advisors?

9 A. During which time period?

10 Q. Up until 2019?

11 A. Yes, he was the portfolio manager of  
12 the Highland Longshore Healthcare Fund. And  
13 prior to that time, he worked as an investment  
14 analyst or a senior analyst covering healthcare.  
15 He covered biotech, pharmaceuticals. He had a  
16 Ph.D. in biochemistry, Dr. Hilgenbrink. Smart  
17 guy. So, yes.

18 Q. Okay. So are you aware that he  
19 resigned from this position as portfolio manager  
20 of this healthcare fund on April 24th of 2019?

21 A. That seems about right, yeah.

22 Q. Okay. Are you aware that on the same  
23 date Nathan Burns became the portfolio manager of  
24 the healthcare fund?

25 A. I'm not specifically aware of the

1 NORRIS

2 date, but I believe Nate was portfolio manager of  
3 that fund. And I should say he was providing  
4 research to the healthcare team prior to that as  
5 well.

6 Q. Okay. But around that date he --

7 A. Yeah.

8 Q. -- right?

9 A. Yeah.

10 Q. Okay. So HCMFA was aware that Nathan  
11 took over Andrew's role around the time that  
12 Andrew left, right?

13 A. Yeah.

14 Q. Okay. So one year after the  
15 payroll -- the HCMFA Payroll Reimbursement  
16 Agreement became effective, Nathan started  
17 performing additional services for HCMFA, right?

18 A. Well, here is what I would say.

19 Maybe not at this -- maybe the percentage  
20 allocation would have swapped, he was 70 percent  
21 of his time of NexPoint Advisors, 10 at HCMFA,  
22 combined 80. Maybe it was a movement between,  
23 and he would have allocated to the other entity.  
24 The other 20 percent, HCMLP. I would also note  
25 that I do know that Nate became a key contributor

1 NORRIS

2 to the healthcare private equity fund at that  
3 time, which he hadn't been primarily focused on.

4 So, yes, your point is Nate was  
5 providing more services now at HCMFA. He only  
6 has a hundred percent of his time. Was it just  
7 the movement of the 5? What is the allocation?  
8 I'm interested to see -- and one thing I would  
9 point out here, I would love to see this, is Dave  
10 Klos created this classification with  
11 Mr. Waterhouse at the end of 2020, so after this  
12 time period we're talking about where he actually  
13 calculated the amount of investment services  
14 under the Payroll Reimbursement Agreement. And  
15 we've asked for the backup of this multiple  
16 times.

17 Davor told me he has asked Mr. Morris  
18 for the actual support of the spreadsheet behind  
19 it, including a name of the spreadsheet, which we  
20 haven't received yet. So maybe Highland has been  
21 already allocating -- and I would hope they  
22 would, that's what we would hope that Highland  
23 was giving the proper allocation for these  
24 people's time, but we haven't seen that yet.

25 So I don't know if that's already

1 NORRIS

2 been updated or changed or what. Dave Klos I  
3 would assume who was the controller at that time,  
4 now CFO of Highland, would have had proper access  
5 to these numbers.

6 Q. Okay. So just taking a step back.

7 Focusing on just this -- you said that HCMFA knew  
8 that he started providing these additional  
9 services relating to this healthcare fund?

10 A. Again, I didn't say additional  
11 services. It's he's providing additional time  
12 maybe allocated to HCMFA. Again, I don't know if  
13 it's more time. I mean, this is a really small  
14 healthcare fund with public equities. Nate was  
15 already covering securities, covering healthcare.

16 And I don't know the specifics of his  
17 time. I would have to look to you. We were  
18 aware that he was portfolio manager. We were  
19 aware he has been contributing names. There's a  
20 lot of things.

21 Q. Okay. So if he took on this new  
22 role, did HCMFA ever seek to make sure that the  
23 10 percent allocated was still accurate?

24 A. Again, I'll go back to my same  
25 comments. Until late 2020, we had expected and

1 NORRIS

2 outsourced and hoped and fully believed that  
3 Highland was doing that, right? And we believed  
4 that we were reimbursing -- the intent of this  
5 wasn't to keep charging the same amount. We  
6 thought Highland was, and so we think that there  
7 should be a proper calculation done that would  
8 allocate the proper amount spent.

9 Q. Okay. Are you familiar with an  
10 individual named Ajit Jain?

11 A. I am. It's Ajit, not Ajit.

12 Q. Ajit. Okay. Do you know what his  
13 title was -- did he work at Highland?

14 A. He worked at Highland.

15 Q. Do you know what his title was?

16 A. I don't remember his specific title,  
17 but I bet you have it right there to tell me.

18 Q. Does it sound familiar if I say he  
19 was a risk management -- he was head of the risk  
20 management program?

21 A. I know he -- I don't know if I would  
22 say he's the head of risk management. Joe Sowin,  
23 I think he reported to Joe. But he oversaw risk  
24 management, yeah. And so there was some trading  
25 of derivatives and certain things he did.

1 NORRIS

2 Q. Okay. So in his role it's fair to  
3 say he performed advisory services for the  
4 Advisors, right?

5 A. I wouldn't necessarily say they were  
6 advisory services. I mean, risk management is  
7 more of a middle office-type function. Trading  
8 services, which were fully under the Shared  
9 Services Agreement, I would say -- I would  
10 classify Ajit more of a middle office type, back  
11 office type -- not back office but middle office  
12 services providing risk management and more of a  
13 compliance/risk management and trading service.

14 Q. Okay. Did Ajit provide any  
15 investment advisory services for the Advisors?

16 A. I don't know. I don't know.

17 And along with this, we're not  
18 contending that there's not a true-up of certain  
19 aspects of this that need to be made. If HCMLP  
20 has employees that they are arguing were  
21 providing advisory services, we would love to see  
22 it, but we haven't seen any yet. And we would  
23 love to have an opportunity to negotiate in good  
24 faith a resolution on it. So we're welcome to  
25 see if -- if I'm following your line of

1 NORRIS

2 questioning, you're saying that you think Ajit  
3 was providing investment advisory services. We  
4 could argue otherwise; but, you know, we would  
5 love to hear if you think there is other  
6 employees.

7 Q. Okay. Well, no, I mean, I'm still  
8 trying to get a sense of how these lists in these  
9 allocations work. So I'm just trying to  
10 understand, and maybe you can answer this. If  
11 Ajit was providing investment advisory services  
12 to the Advisors, do the Advisors contend -- or to  
13 HCMFA, would --

14 A. Yeah, maybe I think -- I think Ajit  
15 was hired -- do you have the date there he was  
16 hired? I think it was maybe 2015 or 2016.

17 Q. Well, he started performing services  
18 for the Advisors around May 21st of 2018.

19 A. So I believe he was hired in 2016,  
20 and his role remained largely the same his entire  
21 time here. So we have a point in time,  
22 January 1st, that Highland, who prepared -- we  
23 believe prepared this -- and, again, we don't  
24 have the insight of Frank and Dave and what we're  
25 going to be able to depose them, and we don't

1 NORRIS

2 have the backup of Frank's spreadsheet. But I do  
3 know very well that Ajit -- why wouldn't they  
4 have included him here as of January 1st. And  
5 I'll -- I'll stop there.

6 Q. Okay. So let me go back to the  
7 question I was going to ask.

8 So if Ajit provided investment  
9 advisory services to HCMFA, do the Advisors  
10 contend that Ajit should have been on the list of  
11 dual employees?

12 A. I would say -- I would say we don't  
13 believe there is anyone that's not on the list  
14 that shouldn't have been added, right? And  
15 the -- if you look at Agit's -- let's ignore  
16 Ajit. Let's look at what was provided. And even  
17 Agit's role as being -- I would say is more  
18 middle office. And we can go back and look at  
19 the agreements: trading services, compliance,  
20 risk management may even be mentioned. Those are  
21 all things Ajit was doing. I think that's  
22 probably why he wasn't included.

23 Again, I'm only speculating, because  
24 we haven't asked Mr. Waterhouse around why these  
25 were formed. So I would leave it as we'll wait

1 NORRIS

2 to depose Mr. Waterhouse and Mr. Klos on this.

3 Q. Okay. So are you saying -- again,  
4 I'm just trying to understand what you're saying.  
5 Are you saying there was nobody that was working  
6 at Highland that was providing investment  
7 advisory services to the Advisors who was not  
8 included on the list?

9 A. In 2018.

10 MR. RUKAVINA: Objection. Form.

11 A. Again --

12 BY MS. WINOGRAD:

13 Q. Okay.

14 A. -- our understanding is that was a  
15 list of the dual employees that were providing  
16 investment advisory services and -- it's an  
17 and -- dual employee and providing investment  
18 advisory services. If Highland decided, hey,  
19 they weren't going to include someone, I would  
20 love to know why, but we can't speculate on that.

21 Q. Okay. So let's just go back to 2018.

22 Was there anybody providing investment advisory  
23 services to the Advisors in 2018 who was not on  
24 that list?

25 A. Not that I'm aware of.

1 NORRIS

2 Q. Okay. And if they were, is it the  
3 Advisors' contention that that person should have  
4 been on the list?

5 A. I think that's probably asking for a  
6 legal conclusion and, again, I don't -- I  
7 don't -- I'm not an attorney.

8 Q. Okay. But based on the terms of  
9 the -- but the purpose of the agreement was so  
10 that Highland could provide employees to service  
11 the Advisors regarding these investment advisory  
12 services, right?

13 A. Yes. It was to reimburse for actual  
14 services provided for dual employees that were  
15 providing investment advisory services. And I  
16 mentioned it, if there were employees that were  
17 providing those services that Highland didn't  
18 mention, we would love to learn, right? We would  
19 love to see the support and have a good faith  
20 discussion on that. And I think, you know, we'll  
21 be interested to see the calculation that  
22 Mr. Klos provided at the end of December -- or  
23 December of 2020 where he has a list of who he  
24 included -- who Highland included as dual  
25 employees providing investment advisory services.

1 NORRIS

2 Q. Okay. So if there is a person that  
3 should have been included on that list because  
4 they were providing investment advisory services  
5 but that wasn't on that list, do the Advisors  
6 contend they should have paid for that person?

7 A. Again, I'll -- I'll -- knowing the  
8 process and the true-up -- I don't know what went  
9 into the 2018 true-up, right? Was Agit's numbers  
10 or someone else -- there clearly was someone  
11 else, or we believe there was maybe more at that  
12 time, or other services provided, because we had  
13 to pay Highland. Clearly there is a number of  
14 employees here. Our number shows it's worth over  
15 \$7.6 million of services we paid for for  
16 employees that were no longer there, not even  
17 services but cost, reimbursement for employees  
18 there were no longer there.

19 Q. Okay.

20 MR. RUKAVINA: When you find a  
21 convenience time, please, let's take a break.  
22 Again, no rush.

23 MS. WINOGRAD: Why don't we take a  
24 five-minute break right now.

25 (A break was taken from 12:00 p.m. to

1 NORRIS

2 12:50 p.m.)

3 BY MS. WINOGRAD:

4 Q. So I just want to go back to  
5 something you said before our lunch break. You  
6 said that, and correct me if I'm wrong, but that  
7 Klos and Waterhouse did some sort of analysis  
8 that led to the amendment. Do you have the  
9 document that reflects the analysis?

10 A. I would say that's an assumption. I  
11 would assume that in order to calculate an amount  
12 they did an analysis, but we haven't been able to  
13 speak to them and we don't have a document  
14 relating to that. It hasn't been provided in  
15 discovery on your end, and we don't -- we aren't  
16 aware of what it looks like. But if you have  
17 that, we would love to see it.

18 Q. Okay. And, then, so the Advisors  
19 contend in their administrative claim, as we  
20 discussed earlier this morning, that Mr. Seery  
21 directed -- that in or around July of 2020,  
22 Mr. Seery gave some directives to the Debtor. Do  
23 you remember that?

24 A. I remember our discussion earlier and  
25 the question --

1 NORRIS

2 Q. Exactly. So do the Advisors contend  
3 that Highland failed to perform any services  
4 before July of 2020?

5 A. In regards to the PRAs, yes, right,  
6 we believe that prior to that there was  
7 significant overcharging with paying for  
8 employees that were no longer employed. But as  
9 far as damages and calculations that we're  
10 proposing here on the Shared Services Agreement,  
11 it's that period beyond. What I talked about, it  
12 was having to hire an outside attorney, having to  
13 bring in Mr. Post.

14 Q. Okay.

15 A. And there may have been services that  
16 had been reduced, right, and I would point to  
17 those are the specific ones that we can point to.  
18 But if there were services prior that we were  
19 being charged for that we weren't receiving, then  
20 that should be calculated in as well. But we  
21 haven't finished our deposition of Mr. Klos and  
22 Mr. Waterhouse, who are closest to that  
23 information.

24 Q. Okay. And, then, do you remember  
25 when I asked you a couple of questions about the

1 NORRIS

2 sub-advis- -- the NexPoint sub-advisory  
3 agreement?

4 A. I do.

5 Q. And do you remember when you said  
6 that the NexPoint PRA replaced the sub-advisory  
7 agreement?

8 A. I think I said I thought. I don't  
9 have all the details of what went into that, as I  
10 explained. And we don't. So, yes.

11 Q. Okay. So why do you think the PRA  
12 replaced the sub-advisory agreement?

13 A. They had the same intent of  
14 investment advisory agreements. And based on the  
15 limited knowledge that we're able to gain was  
16 that it was a replacement, right? But that was  
17 put in place, and there was some advice from  
18 counsel that it needed to be drafted in another  
19 way, that it couldn't just be an absolute payment  
20 or an advisory agreement. It had to be a  
21 reimbursement for services provided. There was  
22 sensitivity from the '40 Act perspective that you  
23 can't have a profit center at an affiliated  
24 Advisor, and it needed to be a reimbursement. So  
25 that's the limited knowledge we have. Again, we

1 NORRIS

2 haven't been able to talk to Mr. Klos and  
3 Mr. Waterhouse, who we believe have more  
4 information on that.

5 Q. Okay. So do you know whether the  
6 sub-advisory agreement would have required a vote  
7 of the retail funds?

8 A. A vote of retail funds? No, there  
9 wouldn't be -- the Advisor enters into the  
10 agreements. However, yes, there is no vote of  
11 the retail funds related to advisory,  
12 sub-advisory or Shared Services Agreement.

13 Q. Okay. So like the sub-advisory  
14 agreement didn't meet any kind of shareholder  
15 approval?

16 A. No. We have exemptive relief. And,  
17 again, I don't know how this one -- just  
18 generally a sub-advisory agreement we have  
19 exemptive relief to appoint sub-Advisors without  
20 the vote of shareholders.

21 But, again, this particular instance,  
22 an affiliated sub-advisor, I don't know what  
23 analysis went into it and what would have been  
24 the requirement.

25 Q. Okay. So Mr. Waterhouse was the

1 NORRIS

2 treasurer of NexPoint during the time the Shared  
3 Services Agreement was in effect, right?

4 A. I don't know if it was the entire  
5 time the Shared Services Agreements were in  
6 effect, but for a portion of it.

7 Q. Okay. But you said that he was the  
8 treasurer of the Advisors for a portion of the  
9 time these agreements were in?

10 A. Correct.

11 Q. Okay. So as his role, he was -- is  
12 it fair to say he was involved in the financing  
13 of the Advisors? Let me rephrase that. In the  
14 financial affairs of the Advisors?

15 A. Well, we had outsourced to Highland  
16 the books and records for the actual Advisors as  
17 well. So the accounting team at HCMLP and all  
18 the accounting team members performed those  
19 accounting functions for the Advisors.

20 Q. Okay. So the Advisors relied on  
21 Highland to make determination regarding the  
22 accuracy of the allocations in the PRAs, right?

23 A. You want to repeat that one more  
24 time.

25 Q. So you had said earlier -- and

1 NORRIS

2 correct me if I'm wrong -- but that the Advisors  
3 relied on Highland to make sure that the  
4 allocations in the PRAs were accurate, right?

5 A. We had relied on them to actually  
6 submit reimbursements for the appropriate amounts  
7 and pay the appropriate amounts, yes.

8 Q. And to make sure that an employee on  
9 the PRA list, that that percentage allocation was  
10 accurate for a particular employee, right?

11 A. Generally speaking, we assumed that  
12 those numbers were being updated and were  
13 accurate. And there was an operating procedure  
14 before bankruptcy where they did a true-up, as  
15 you talked about, at the end of 2018. And so  
16 they had been -- up until that point we assumed  
17 they had been continuing to do so.

18 Q. Okay. And did the Advisors, when  
19 they were advising -- when they were relying on  
20 Highland, were they also relying on  
21 Mr. Waterhouse?

22 A. I don't know if Mr. Waterhouse --  
23 again, we haven't had the chance to depose  
24 Mr. Waterhouse, but it was the accounting team:  
25 Mr. Klos, Mr. Waterhouse, Hayley, Kristin. There

1 NORRIS

2 was a team of people involved that were Highland  
3 employees tasked with the accounting.

4 Q. Okay. So it's fair to say  
5 Mr. Waterhouse was on that team?

6 A. He was the CFO of HCMLP.

7 Q. So he was involved with that process,  
8 then, right?

9 A. I would think so. Again, we haven't  
10 asked Mr. Waterhouse. We didn't have access to  
11 him prior to this. So we look forward to what  
12 we'll hear from him.

13 Q. Okay. So I want to just hear more  
14 about what -- you mentioned there was this  
15 true-up. What is a true-up?

16 A. Yeah, so -- and I call it a true-up  
17 because that's the terms that Dave Klos told me  
18 that were used. But essentially it is a -- it is  
19 very challenging on a monthly basis to figure out  
20 what the allocations were, figure out who the  
21 employees were, because things did change, as we  
22 see. There was a number of employees, almost 75  
23 percent of the schedule, maybe more, that were no  
24 longer employed.

25 And so they would do a calculation to

1 NORRIS

2 say, I'm assuming -- again, we haven't spoken to  
3 Dave and Frank to try to understand the  
4 process -- but assuming that the process was,  
5 given what they told us a true-up, what are the  
6 actual expenses. The true-up was not done in  
7 2019 and 2020. There were no adjustments made.  
8 And even in 2018 when it happened, we wrote a  
9 check -- the Advisors wrote a check to Highland  
10 because we consumed additional services. We very  
11 clearly believe, and I think there's plenty of  
12 evidence here, that we overpaid in '19 and '20,  
13 but there needs to be a true-up.

14 Q. Okay. So in simple terms, a true-up  
15 is -- so it's an analysis that helps the Advisors  
16 understand if the payments they were making were  
17 for the employees that they had assumed were  
18 there at the -- working for the Advisors?

19 A. I wouldn't say it's to help us assume  
20 or understand the allocation. It's to figure out  
21 what the true reimbursement amount is.

22 Q. Okay.

23 A. And that is what is the actual costs  
24 incurred, and reimburse that. And so it wasn't  
25 something that was done, our understanding, prior

1 NORRIS

2 to the end of 2018, because operationally it  
3 wasn't efficient. And so they did it once a  
4 year. Would it have been done in 2019? Dave  
5 Klos said yes, but they filed for bankruptcy in  
6 October, and for whatever reason, they decided  
7 not to do it.

8 Q. Okay. So the true-up would have been  
9 done at the end of 2019?

10 A. That is our understanding.

11 Q. Do you know around what month in  
12 2019?

13 A. It was done in December of 2018. One  
14 could speculate -- again, agreements were put in  
15 place in January 2018. They did it in  
16 December 2018. Logically, it would be an annual  
17 process, and Dave even said it would have been  
18 done at the end of the year. Seems like the  
19 year-end would be a great time to do it.

20 Q. Um-hum.

21 So was it the Advisors' contention  
22 that the true-up wasn't performed in 2019 because  
23 of the bankruptcy?

24 A. We were told by Mr. Klos and  
25 Mr. Waterhouse that there were no adjustments.

1 NORRIS

2 The amounts continued because of, they thought,  
3 the automatic stay prevented it. And so that was  
4 their contention. And, again, our recourse here  
5 was to file an admin claim, and that's -- that's  
6 the route we went.

7 Q. Okay.

8 MS. WINOGRAD: La Asia, can we show  
9 Exhibit 14, please.

10 (Exhibit 14 marked for identification.)

11 BY MS. WINOGRAD:

12 Q. Mr. Norris, are you familiar with  
13 this document?

14 A. I am. I believe I have it printed  
15 here, if it's the same one. Hold on.

16 This is Defendants' Objections and  
17 Responses to Plaintiffs' Requests for Admissions.

18 Maybe you can scroll down, and I can  
19 look at the document?

20 Q. Yeah, why don't we do that.

21 A. I believe this is the ones responsive  
22 to discovery and --

23 Q. Yes.

24 A. Okay.

25 Q. These are the Advisors' responses

1 NORRIS

2 responsive to Highland's discovery request,  
3 right?

4 A. Here it is. I believe it's the same  
5 one. 18 pages long? Yes.

6 Q. Okay. Is the information contained  
7 in this -- in these responses, was it true and  
8 accurate at the time it was written?

9 A. Yes.

10 Q. Okay. Do you think there is anything  
11 that needs to be amended?

12 MR. RUKAVINA: We -- I'll answer  
13 that. We're going to supplement one of the  
14 interrogatories.

15 If you can scroll down.

16 We are going to supplement an  
17 interrogatory. I'm trying to find the document.  
18 Oh, I'm sorry.

19 I'm sorry, Ms. -- okay. She just  
20 shared it.

21 MS. CANTY: It's also in the Chat,  
22 guys.

23 MR. RUKAVINA: I just did that. Let  
24 me just pull it up.

25 MR. MORRIS: Can you just tell us

1 NORRIS

2 what the amendment is?

3 MR. RUKAVINA: Well, that's what I'm  
4 trying to --

5 MR. MORRIS: Okay. I'm sorry.

6 MR. RUKAVINA: If you would, maybe  
7 it's fastest if you scroll down through the  
8 interrogatories.

9 MS. WINOGRAD: They start at -- go to  
10 page 11, I think. Yeah, there we go.

11 MR. RUKAVINA: All right. Please  
12 scroll down. Stop there.

13 Please scroll down. Stop there.

14 Please scroll down.

15 All right. Scroll back up to 12.

16 Okay. Then, I apologize, maybe I'm  
17 wrong. We were going to -- just so, John, you  
18 know, we were going to change the amount of  
19 damages from 14 million to 10 million. I'm using  
20 round numbers. I thought it was in here  
21 somewhere but I don't want to waste --

22 MR. MORRIS: All right. But he's  
23 going to testify to it anyway when I ask him  
24 about damages.

25 MR. RUKAVINA: Then I apologize

1 NORRIS

2 for taking everyone's time.

3 MR. MORRIS: No problem.

4 MS. WINOGRAD: I'm sorry, can you  
5 hold on for one second?

6 Okay. Can you hear me okay?

7 THE WITNESS: I can.

8 BY MS. WINOGRAD:

9 Q. Okay. So can we scroll to page 12,  
10 please.

11 Okay. Do you see here in  
12 Interrogatory Number 3, Highland asked the  
13 Advisors to identify the date on which they  
14 believed that the former dual employees  
15 identified on the lists we just discussed  
16 attached as Exhibit A departed the Debtor? Do  
17 you see that?

18 A. Yes.

19 Q. Okay. And then in the Advisors'  
20 response they list all of the dual employees and  
21 then the corresponding date that they contend  
22 those employees departed the Debtor?

23 A. Yes.

24 Q. Okay. And so the Advisors -- the  
25 Advisors were generally aware of the employees'

1 NORRIS

2 terminations and departures as they occurred,  
3 right?

4 MR. RUKAVINA: I think there is a  
5 question on here.

6 MS. WINOGRAD: Yes, it's the next  
7 one.

8 THE WITNESS: Yeah, let's go to the  
9 next one, and I would say our response is  
10 accurate.

11 MS. WINOGRAD: Okay. So we can just  
12 scroll through it, La Asia.

13 A. There you go. The Advisors were  
14 generally aware of the employees' terminations  
15 and departures as they occurred.

16 BY MS. WINOGRAD:

17 Q. Okay. So does this mean that the  
18 Advisors became aware of the employees'  
19 departures at the time the employees left?

20 A. As they -- maybe not the same day,  
21 but we were generally aware. We knew people had  
22 left. We also receive a monthly report from HR  
23 at HCMLP of employees that had departed.

24 Q. Okay. Great.

25 So within a week were the Advisors

1 NORRIS

2 generally aware that employees had left?

3 A. Again, so there's a monthly report,  
4 if it was the beginning of the month, it may have  
5 been a month, but generally as they occurred.

6 Q. Okay. So for any --

7 MS. WINOGRAD: Can we go back to  
8 page 12, La Asia.

9 Thanks.

10 BY MS. WINOGRAD:

11 Q. So for any of the employees listed  
12 here, if we could scroll down just a tiny bit,  
13 and then a little bit more, because I think there  
14 is one employee -- there we go. That's fine.

15 For any of the employees listed here,  
16 did the Advisors exercise their rights under  
17 Section 4.02 of the Payroll Reimbursement  
18 Agreement after they left?

19 A. 4.02. The Advisors?

20 Q. Do you want to go back to  
21 Section 4.02, or do you have it in front of you?

22 A. Yeah, I think -- and if I'm looking  
23 at this as -- hang on, I'll come back to it.

24 I would say it gets back to we were  
25 aware they left. We had relied on Highland to

1 NORRIS

2 perform the calculations. And 4.02 clearly says,  
3 should either party determine that a change to an  
4 employee reimbursement is appropriate, Highland  
5 knew they had left, they knew they continued to  
6 charge us more. Why didn't they make an update,  
7 right? And that's our contention.

8 We relied on Highland to do the  
9 calculation, as I discussed earlier, and we  
10 assumed, and appropriately here, that they were  
11 doing that. Again, that wasn't the fault of the  
12 individuals. They were told they couldn't  
13 because of the automatic stay, and they even had  
14 the overpayment calculation, what the actual  
15 proper calculation should be.

16 And again, we haven't received the  
17 backup detail from Mr. Klos's calculation. But  
18 looking at the numbers, she was calculating an  
19 actual amount when they had dropped these  
20 employees.

21 Q. Okay. But the employees didn't --  
22 did the employees ever ask Highland if the list  
23 should be -- if the allocation should be changed?

24 A. The employees, as in these employees  
25 that left?

1 NORRIS

2 Q. Yeah, locations on the list, yeah.

3 A. I don't know that these employees  
4 were involved at all in the calculation or the  
5 allocations. The employees leaving requesting a  
6 change to the allocations, the employees didn't  
7 really impact that, to my understanding.

8 Q. So you're saying that if an employee  
9 on the Exhibit A of the Payroll Reimbursement  
10 Agreement left, then that wouldn't affect that  
11 person's name appearing on that list?

12 A. It would, but you asked if that  
13 employee would ask for the allocation to be  
14 updated.

15 Q. No, no, I think that -- let me -- I  
16 think there was a misunderstanding.

17 So after an employee left, did the  
18 Advisors ask Highland if -- if the -- if the list  
19 should be updated?

20 A. We had hired Highland for accounting,  
21 payables, all of this, including the calculations  
22 within that realm. We thought that they had --  
23 that was being updated, right? And it wasn't.  
24 Or maybe it was, they just didn't notify us or  
25 bring it to our attention because they were told

1 NORRIS

2 they could not.

3 Q. But the Advisors -- but the Advisors  
4 kept paying Highland the same amounts per month  
5 even after certain employees left, right?

6 A. No, the Advisors never voluntarily  
7 said, yeah, let me pay the same amount. We were  
8 under the understanding that Highland, who was  
9 handling our payments -- again, the entire  
10 Highland accounting team had access, was creating  
11 the calculations, created an invoice for the  
12 wrong amount, transferred the cash, had access to  
13 our bank account, with no one at the Advisors  
14 even knowing that was happening.

15 And so we didn't -- we didn't pay.

16 It was paid by Highland employees, and that was  
17 the process.

18 Q. Okay. So after any of these  
19 employees departed the Debtor, were there any  
20 specific services that the Advisors stopped  
21 receiving from Highland?

22 A. Yeah.

23 Q. Can you identify an employee who  
24 got -- you know, who that would apply to?

25 A. Yeah, that's just -- here is one real

1 NORRIS

2 easy one: Trey Parker. He was the chief  
3 investment officer. He left. Joe Sowin was  
4 appointed as chief investment officer or co-CIO  
5 with Jim. Joe Sowin is an HCMFA employee. And  
6 that's a simple one.

7 John Poglitsch, head of credit  
8 research, left December 22nd, 2020. There was no  
9 head of credit research when John left employed  
10 at HCMLP providing that service.

11 Yeah, I can go down the list if you  
12 want, but, you know, there is -- each one of  
13 these, there was not a hire made to replace, my  
14 understanding, any of these people by HCMLP.  
15 They were in bankruptcy, right? They were a  
16 debtor in possession. They weren't hiring new  
17 people to replace these individuals.

18 And so that is -- that's our belief  
19 and our position.

20 Q. Okay. So I'm going to skip ahead to  
21 a question here about Trey Parker because you  
22 just mentioned him. So what title -- can you  
23 repeat for me what title Trey Parker held?

24 A. He was co-CIO.

25 Q. Okay. So he held the title of

1 NORRIS

2 co-head of private equity; is that right?

3 A. He may have.

4 Q. Okay.

5 A. I don't know. In his actions  
6 regarding our retail funds, the co-CIO is the  
7 role in which we interacted with him.

8 MS. WINOGRAD: Okay. La Asia, can  
9 you put up Exhibit 14 for a moment.

10 MS. CANTY: This is 14.

11 MS. WINOGRAD: I'm sorry.

12 Exhibit 34.

13 (Exhibit 34 marked for identification.)

14 BY MS. WINOGRAD:

15 Q. Okay. So this is Trey's compensation  
16 statement. Right?

17 A. Yeah.

18 Q. Okay. And it says here that he has a  
19 title of partner co-head of private equity,  
20 right?

21 A. According to this.

22 Q. Okay. So it's fair to say that was  
23 his title at Highland, right?

24 A. I mean, at the top it says partner  
25 and co-CIO, which is --

1 NORRIS

2 Q. Okay. But it says that effective  
3 March 1st, 2019 his new title will be partner  
4 co-head of private equity.

5 A. Got it. And maybe it was at that  
6 time that Joe Sowin took over the role, again, an  
7 HCMFA employee.

8 Q. Okay.

9 A. Maybe at that point Trey Parker  
10 wasn't providing as much services to the  
11 retail advisors. Because the private equity was  
12 largely on the institutional side and -- so,  
13 yeah, I see what it says here in the title.

14 Q. Okay. I just wanted to make sure we  
15 were on the same page about what his title was.

16 MS. WINOGRAD: La Asia, can we go  
17 back to the Exhibit 14, please.

18 Thank you.

19 BY MS. WINOGRAD:

20 Q. So in his role, what services did  
21 Trey perform?

22 A. Yeah, he was the portfolio manager  
23 for our Highland Floating Rate Opportunities  
24 Fund, changed its name to Highland Income Fund.  
25 He was a portfolio manager on the Opportunistic

1 NORRIS

2 Credit Fund. He helped manage the investment  
3 services of our credit investments that were in  
4 our retail funds.

5 He also handled private equity  
6 investments of which the Debtor had a significant  
7 portion on their balance sheet. And so -- but  
8 his largely was the overseeing the investment  
9 process.

10 And how that applied to our Advisors  
11 was he was a named portfolio manager on a couple  
12 of our funds, including the Highland Income Fund,  
13 the Opportunistic Credit Fund, maybe another fund  
14 or two, but those were his primary duties in  
15 interacting with us.

16 Q. Okay. Are you familiar with  
17 TerreStar Investments?

18 A. I am.

19 Q. Okay. Did Trey perform investment  
20 services for TerreStar?

21 A. My understanding is that he did.

22 Q. Okay. And TerreStar was a big  
23 investment held by the funds, right?

24 MR. RUKAVINA: Objection. Form.

25 A. Yeah, big? Sorry.

1 NORRIS

2 BY MS. WINOGRAD:

3 Q. How would you categorize it?

4 A. It was a material position held by  
5 one fund and held in a few of our other funds.

6 Yeah.

7 Q. Okay. So it was a significant  
8 investment for the funds, right?

9 A. Funds, plural, no. One singular  
10 fund, it was an important position.

11 Q. Was it -- was it a significant  
12 investment -- investment for the Global  
13 Allocation Fund?

14 A. Are we talking a legal term  
15 "significant"?

16 Q. Was it a large investment for the  
17 Global Allocation Fund?

18 A. By and large.

19 Q. More than -- among the top ten or  
20 just holdings for the fund?

21 A. Yeah, yeah.

22 Q. Was it among the top --

23 A. Sorry, go ahead.

24 Q. I was just going to say, is it among  
25 the top ten largest holdings for the NexPoint

1 NORRIS

2 Strategic Opportunity Fund?

3 A. I don't know on the position side.

4 It was much smaller in that fund.

5 Q. Okay. Nexpoint Capital, Inc., was it  
6 among the top ten largest holdings of this fund  
7 as of 2020?

8 A. I don't know without having the  
9 answers -- again, this is not something I believe  
10 was on the preparation material, so as the -- I'm  
11 not prepared to answer the holding sizes of  
12 positions. But that would be factual information  
13 that you could find.

14 Q. Okay. But TerreStar was -- but  
15 TerreStar was a significant investment for some  
16 of the funds, right?

17 A. At least the Global Allocation Fund.  
18 Again, we haven't defined "significant" but it  
19 was a top ten position, if that was your  
20 definition. That one, I do know. On the others,  
21 I don't know if it fell into the top ten or was  
22 further down, but I know it was much smaller than  
23 the other funds.

24 Q. Okay. So is it fair to say Trey  
25 spent a significant amount of his time servicing

1 NORRIS

2 TerreStar?

3 A. I don't know that's the case. It was  
4 one position. I think they covered hundreds of  
5 positions. So I don't know what times -- you  
6 know, Trey's time was allocated to TerreStar.

7 Q. Okay. Do you have, like, a rough  
8 estimate of what percentage of Trey's time he  
9 spent on TerreStar? Was it over 50?

10 A. Oh, I would imagine it's much smaller  
11 than 50, but I would be speculating. Again, I  
12 think they covered hundreds of positions, and he  
13 was the CIO and, you know, head of credit  
14 research before that. He oversaw the investment  
15 process and he had a large, you know, commitment  
16 of time.

17 My understanding of TerreStar is  
18 there was only two board members. Trey was one  
19 of them. And there was periodic meetings. But  
20 it was not an operating company, it's an asset.  
21 But I don't think there was that much ongoing  
22 time, based on our understanding. But I don't --  
23 I'm, again, speculating.

24 Q. Okay. So when -- so the Advisors  
25 contend Trey Parker left the Debtor on

1 NORRIS

2 February 28th of 2020, right?

3 A. Based on this schedule, which I  
4 believe these dates were taken from the Debtor's  
5 schedules that we received from Debtor employees.

6 Q. And when Trey left, did the Advisors  
7 exercise their rights under Section 4.02 and  
8 Section 2.02 of the PRA?

9 A. I'll just go back to my previous  
10 answer on that. When you asked about any of  
11 these employees, it's the same answer.

12 Q. After Trey left, did the Advisors  
13 stop receiving investment advisory services  
14 relating to TerreStar?

15 A. Not that I know of.

16 Q. And after Trey left, did the Advisors  
17 stop receiving any of the investment advisory  
18 services that Trey had performed?

19 A. Certainly, yeah. There was a lot of  
20 his time allocation that there was no replacement  
21 person. We certainly -- there was -- you take a  
22 senior partner away, who was doing a lot for our  
23 funds, we had to replace him with HCMFA  
24 employees.

25 Joe Sowin, I know, was appointed as a

1 NORRIS

2 portfolio manager of one of the funds. One of  
3 the other funds we had to liquidate. So, yeah,  
4 we had a drop-off. We didn't receive any  
5 replacement services largely for what Trey  
6 performed.

7 Q. Okay. So you mentioned specifically  
8 the services that he was -- what were the  
9 services that he was providing that you're saying  
10 were no longer provided?

11 A. Yeah, the -- the day-to-day -- let's  
12 go to -- let's go to his payroll reimbursement,  
13 for Trey Parker is 30 percent of his time to  
14 HCMFA and NexPoint Advisors is 15 percent maybe.

15 So you take approximately 45 percent  
16 of a person's time that was at some point  
17 committed to these Advisors, and he leaves, there  
18 was no person hired to handle the credit  
19 research, there was no person hired by HCMLP to  
20 handle his portfolio management duty, and the  
21 income -- the Highland Income Fund was a billion  
22 dollar fund. Right? There was a lot going on  
23 with that fund.

24 The Opportunistic Credit Fund, which  
25 Trey was a portfolio manager of. We didn't have

1 NORRIS

2 a replacement portfolio manager, support  
3 management services, credit research, all of  
4 those, those services. He also did some public  
5 equity stuff, oversaw a lot of the investment  
6 profits. So I do know that -- yeah.

7 Q. So as a result of Trey's departure,  
8 were the Advisors unable to perform certain  
9 services to those funds that you just mentioned?

10 A. No. We had to adjust -- right -- and  
11 reallocate our existing resources. I mentioned  
12 reallocating Joe Sowin as a portfolio manager.  
13 Jim had to step in where he didn't before  
14 previously before do some of the day to day in  
15 some of the investments. We have other employees  
16 that are at the Advisors that are front office  
17 employees that had to pitch in and perform those  
18 duties.

19 Q. And are those -- did that -- did that  
20 cost the Advisors to incur additional expenses?

21 A. None that -- I guess in this instance  
22 we're asserting that we paid for services we  
23 weren't receiving. Right? I'm not prepared to  
24 talk about other additional costs. I'm sure,  
25 again, we had to reallocate people and time, so I

1 NORRIS

2 don't know the answer to that.

3 Q. Okay. You just talked about those  
4 services that the Advisors were no longer  
5 receiving as a result of Trey's departure --

6 A. And here is another point on that, to  
7 be -- you know, Trey's departure came at a time  
8 when the -- and going back to our firm, a lot of  
9 what he had been focused on, our credit business  
10 went from having 20 analysts at Highland to, I  
11 don't know, a handful, maybe three, two. The  
12 private equity book had shrunk significantly.  
13 And so his responsibilities over time related to  
14 our Advisors had also shrunk.

15 And so are we able to continue  
16 performing our services, yes, with the existing  
17 resources and maybe we had to hire one or two  
18 more. And then eventually hired some of the  
19 front office people from Highland to help fill  
20 those holes after the transfer.

21 Q. Um-hum. And so -- when this was all  
22 happening, did the Advisors tell Highland that it  
23 was unable to perform these services -- that the  
24 Advisors were unable to perform these services?

25 A. Well, no, because we didn't tell them

1 NORRIS

2 that the Advisors were unable to perform the  
3 services because Highland was in bankruptcy, we  
4 were aware of that. We were performing them  
5 ourselves at this point. We were not unable, we  
6 were able to perform the services.

7 Q. I'm sorry, say that last part again.  
8 I don't think I understood you.

9 A. Yeah, you asked did we tell them we  
10 were unable to perform these services, and I  
11 said, no, we didn't tell them that because we  
12 were able to. We didn't tell them we were unable  
13 to, we were able to. And we were performing the  
14 services.

15 Q. Okay. I thought you just said that  
16 after Trey left the Advisors weren't able to  
17 perform certain services for the funds when Trey  
18 left, right?

19 A. What I -- and maybe you  
20 misunderstood. Highland didn't perform those  
21 services, the Advisors, our Advisors had to step  
22 in.

23 Q. Okay. And then my question is after  
24 Trey left and the Advisors were no longer able to  
25 perform these services, did the Advisors tell

1 NORRIS

2 Highland that the Advisors were not able to  
3 perform certain services?

4 A. No, because we were able to perform  
5 the services.

6 Q. Okay. So you're saying -- are you  
7 saying -- you said that the Advisors weren't able  
8 to perform certain services, but then are you  
9 saying --

10 A. I don't think I said that.

11 Q. So -- okay. So --

12 A. And maybe I misunderstood your  
13 question.

14 Q. Okay. Let's take a couple of steps  
15 back.

16 So after Trey left, you're saying the  
17 Advisors weren't receiving certain services from  
18 Highland that Trey had been performing. Right?

19 A. Correct.

20 Q. Okay. So does that mean that as a  
21 result of Trey's departure, the Advisors were not  
22 able to perform its own services to the funds?

23 A. No. We, with our personnel, were  
24 able to perform the required services under our  
25 advisory agreements.

1 NORRIS

2 And some of that was spread to other  
3 Highland employees, it wasn't just that Trey  
4 left, it was, okay, well, now, Matthew Gray,  
5 you're going to cover this name and, you know,  
6 whoever else is still here is going to cover a  
7 different name. Nate Burns, you know, you are  
8 going to cover that. And they reallocated his  
9 work without hiring additional people.

10 Q. Okay. And so then when you're saying  
11 that you guys had to shuffle things around and  
12 hire other people after Trey left, did the  
13 Advisors tell Highland that that was going on?

14 A. At this time we were all under the  
15 same roof. Right? This is February 2020,  
16 beginning of bankruptcy. We're all working  
17 together. We knew what the responsibilities  
18 were. It wasn't -- so certainly Highland, you  
19 know, the Advisors and Highland had that  
20 communication, because we were working closely  
21 together.

22 It's not the position you sit in  
23 today where we're in separate offices and there  
24 is litigation back and forth. It's a frame  
25 February 2020, there was a belief that the

1 NORRIS

2 bankruptcy would happen very quickly. Trey  
3 Parker had already planned to leave  
4 pre-bankruptcy, or just after, my understanding.  
5 But in anticipation that this would be a quick  
6 resolution, and all these people were working  
7 closely together cooperatively with no issues.

8 Q. Okay. So just to make sure I have  
9 this right, you're saying that when Trey left,  
10 the Advisors reshuffled things, hired their own  
11 people to replace Trey's services, were no longer  
12 able to receive certain services from Highland  
13 and didn't tell Highland directly that it was --  
14 that it was reshuffling things?

15 A. I think that's a -- that's not the  
16 way at all that I would explain it. I explained  
17 it that we were all there -- there was not like,  
18 let me formally send Highland -- we were in the  
19 same office working collaboratively together as  
20 affiliates, right, up until just, you know,  
21 around that time.

22 And so it was very -- I mean, some --  
23 you were literally in the same office. Some were  
24 Advisor employees, some were HCMLP employees.  
25 They worked closely together. And with Trey

1 NORRIS

2 leaving, all right, we're going to -- some of  
3 HCMLP employees will do the job and some of the  
4 Advisors -- a lot of it was the Advisor  
5 employees, including the key -- the key aspects  
6 of his job of portfolio management, which we used  
7 our existing advisor employee Mr. Andrews for his  
8 replacement.

9 Q. Okay. So let's stay on this list for  
10 a second. So it says on this list that Michael  
11 Phillips left Highland February 20th of 2018,  
12 right?

13 A. Yes.

14 Q. And then Jake Tomlin left Highland  
15 February 20th of 2018, right?

16 A. Yes.

17 Q. Sanjay Gulati left March of 2018?

18 A. Yes.

19 Q. Phil Ryder left Highland April of  
20 2018, right?

21 A. Yes.

22 Q. So there is a total of four employees  
23 that left Highland before May 1st of 2018, right?

24 A. I can't see the top, but if you tell  
25 me that's the case, then that's the case.

1 NORRIS

2 Q. Okay. We can scroll up a little bit.

3 Okay. And this was before the  
4 Payroll Reimbursement Agreements were executed,  
5 right?

6 A. Yes. But that was effective  
7 January 1st, 2018. So before they quit, the  
8 effectiveness of the agreement.

9 Q. Okay. But the Advisors were aware --  
10 excuse me -- of these four employees' departures  
11 prior to executing the payroll reimbursement,  
12 right?

13 A. Again, that would be on Frank. The  
14 Advisors -- I go back to my same answer. We knew  
15 when employees left, and we relied on Highland  
16 for the actual preparation of the calculation.

17 Q. Okay. So let me ask you this. Did  
18 anybody at the Advisors review this agreement  
19 before the Advisors entered into it?

20 A. We don't know.

21 Q. Okay. So the Advisors may have  
22 entered this agreement without understanding its  
23 terms?

24 A. Again, we haven't deposed  
25 Mr. Waterhouse, who signed the agreement, I

1 NORRIS

2 believe is what -- this specific agreement.

3 And you've got to believe -- I  
4 can't -- as an individual looking at this, say,  
5 oh, we knew nothing, we didn't understand the  
6 agreement. There was knowledge entering into the  
7 agreement, we just need to understand from Frank  
8 and Dave what the process and who those were  
9 involved.

10 Q. Okay. So the Advisors entered into  
11 this agreement knowing that four of those  
12 employees were no longer working at Highland?

13 A. I don't know if that's -- I don't  
14 know.

15 But, again, the effective -- there is  
16 a really clear reason why you would want to  
17 include them. It's effective and payments were  
18 effective as of January 1st. So for the  
19 sub-period that they were employed, they would  
20 have paid for their costs. So it was logical to  
21 think that even if they knew that they were no  
22 longer employed, that they would include them on  
23 there because they were employed effective  
24 January 1st, and there was work performed.

25 Q. But they weren't going to be working

1 NORRIS

2 after May 1st of 2018, right?

3 A. Yes, exactly. And that is exactly  
4 why we shouldn't be paying for them. And why we  
5 were shocked that we continued to pay at the same  
6 rate in 2020, the end of 2020, for exactly the  
7 people that were no longer employed in  
8 February 2018, well before the actual filing of  
9 the bankruptcy.

10 So there was obviously a true-up in  
11 2018, so one would speculate that Mr. Klos  
12 updated for those and factored that in, and we  
13 would hope that's the case. But nothing happened  
14 in 2019, nothing happened in 2020, and the  
15 amounts that are considered on here and the  
16 amounts paying match up to what these employees  
17 were as of this date.

18 Q. Okay. But if the -- if the Advisors  
19 don't contend that they shouldn't have been  
20 paying for these four employees, why did they  
21 enter into an agreement to pay for these four  
22 employees?

23 A. Again, the effective date is  
24 January 1st. Again, and I don't have all the  
25 background. I'm sure Mr. Waterhouse and Mr. Klos

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1 NORRIS  
2 would have a good understanding, but one could  
3 speculate, and I don't have to tell you, one  
4 could speculate that that's fair, they are going  
5 to be paid during that period, and after that  
6 they wouldn't be paid. Because it's actual cost,  
7 it's reimbursement for services of people that  
8 are dual employees. If they are not longer  
9 employed, logically you would think, sure, of  
10 course we're not going to pay them. Why in the  
11 world would you pay for someone that is no longer  
12 employed?

13                           And so logically that was actually  
14       the intent of the agreement. They would drop  
15       off, okay, we are not going to reimburse because  
16       they are no longer employed and they're no longer  
17       providing services.

18 And this states -- the agreement  
19 clearly states we reimbursed for employees that  
20 are, one, employed as a dual employee, and, two,  
21 providing investment advisory services.

22 So, again, speculation, but it seems  
23 completely reasonable to me why they would have  
24 included them if the effective date is January  
25 1st.

1 NORRIS

2 Q. But if the Advisors knew of their  
3 departures around the time they left, why didn't  
4 the Advisors exercise their rights under  
5 Section 4.04 to adjust the allocations?

6 A. I'll go back to my previous responses  
7 on the same topic, which is, we relied on  
8 Highland, and you can look at every other  
9 response I had on this. And we assumed that it  
10 would be done the correct way, and in 2018, our  
11 understanding is it was.

12 There was a true-up in December. And  
13 so why didn't we adjust it? Well, the operating  
14 procedure at that point was to adjust at the end  
15 of the year. There is nothing in these  
16 agreements that say you can't adjust something  
17 after the fact, and that was what was done, and  
18 we expected it would have continued to be done  
19 after that.

20 Q. So if you were relying -- if the  
21 Advisors were relying on Highland to make sure  
22 all of these allocations were accurate, what was  
23 the purpose for Section 4.04?

24 A. That's a great question. Again, we  
25 weren't involved in the drafting of agreements.

1 NORRIS

2 And I think that the intent is very clear in what  
3 an agreement -- the agreement is for. It's a  
4 reimbursement. Right? It's not, you're going to  
5 pay a fixed cost to us. It's, you are going to  
6 reimburse for actual cost of what it cost to  
7 employ someone as a dual employee and if they are  
8 providing services.

9 That is the intent of the agreement.

10 And I don't know how you interpret reimbursement  
11 as anything other than paying for someone that's  
12 provided -- it's a reimbursing.

13 Q. So I understand that you're -- that  
14 the Advisors are contending that they have relied  
15 on Highland to ensure that these allocations were  
16 accurate, but did the Advisors have any way of  
17 ensuring that the allocations were accurate?

18 A. We, as I already said, we didn't have  
19 a separate group running calculations. We don't  
20 an accounting group. We don't have a legal  
21 services group. That's why we paid Highland to  
22 do this. So we didn't have a way of double  
23 checking or hiring someone else to come in and  
24 sleuth it because that was what we paid Highland  
25 to do.

1 NORRIS

2 Q. Are you aware that certain employees  
3 of Highland took over Trey Parker's title after  
4 he left?

5 A. Which title?

6 Q. The co-head of private equity.

7 A. I'm aware that the -- there were some  
8 people in the legal team that had already been  
9 providing similar services to some of these  
10 companies, were given certain additional titles,  
11 so their titles of counsel or general counsel or  
12 whatever. Our understanding of that and our  
13 position is that that was somewhat of a carrot.  
14 During the middle of bankruptcy, we need to  
15 provide something for employees to -- additional  
16 for them to feel good about, and it was in  
17 addition to their other services that they were  
18 providing.

19 Q. Okay. Are you aware that on the very  
20 day Trey Parker left, JP Sevilla became co-head  
21 of private equity?

22 A. I believe that your documents you  
23 sent over last night, that was the first time I  
24 had realized that or seen that. And, again,  
25 given that I'm here, it wasn't allowed. Now JP

1 NORRIS

2 is doing Trey's job. It was a maybe you could  
3 help cover one of the names from a legal  
4 perspective. And, again, context is important.  
5 2020, we had a whole team of talented people.  
6 You file for bankruptcy. You've got to try and  
7 retain them. And giving people additional titles  
8 is a carrot, right, and I think that's a big part  
9 of it. And maybe we can ask JP how did -- how  
10 did his role change? Our view was it didn't  
11 change really at all. Maybe there was a little  
12 bit of an allocation, that he was performing  
13 work, as we know he was on TerreStar. Did he  
14 attend a board meeting once a quarter, what was  
15 his time allocation. Again, I mentioned before,  
16 if there's a good faith estimate or, you know,  
17 something that the Debtor would like to  
18 negotiate, we would love to hear it.

19 In this instance, due to, you know,  
20 he was helping with TerreStar, maybe there is a  
21 time allotment, and we can get J.P.'s time,  
22 right? But that -- he did not take over the job  
23 of Trey.

24 And as I mentioned before, private  
25 equity was on its downswing. You can probably

1 NORRIS

2 look and track the private equity investments.

3 Trey's main job related to our Advisors was a

4 portfolio management role, an investment analyst

5 role for our closed-end fund, our open-end fund,

6 and overseeing the profits on the investments

7 that rolled into -- rolled into our funds. And

8 nobody stepped in from that legal team to do

9 those services.

10 Q. So when JP took over Trey's title on

11 the day Trey left, did JP start performing any of

12 the functions that Trey performed previously?

13 A. I don't know. I would have to ask.

14 I'm not -- other than helping with TerreStar, I

15 think it was probably -- I think it was a group

16 effort. I know Jim pitched in. I know there

17 were other people. It was a group effort. But,

18 again, a company with no operations, no cash

19 flows, it's literally an asset. And so I don't

20 know what else JP did, but we can certainly ask

21 him.

22 Q. Okay. But JP did start helping on

23 TerreStar, right, when Trey left?

24 A. I believe that's the case, but I'm

25 not certain. I know he had given a few updates

1 NORRIS

2 occasionally. My interaction there was very  
3 limited because I don't think there was much for  
4 him to do.

5 Q. Okay. But TerreStar -- okay. So --  
6 so did the Advisors contend that they shouldn't  
7 pay for J.P.'s time working on TerreStar?

8 A. If there was a portion of his time,  
9 again, we'd love to hear if he was providing  
10 investment advisory services. If he's providing  
11 legal and compliance services related to a  
12 company that one of our funds owns, then, again,  
13 there's splitting hairs on what it actually was  
14 that he did. But, again, you mentioned there was  
15 a significant size of his overall allocation  
16 time. Doesn't mean there was a lot of work  
17 involved when JP came in.

18 Q. But even if JP spent, let's just say,  
19 an hour a week on TerreStar, do the Advisors  
20 contend they shouldn't have to pay for that?

21 A. Again, like I said, we are open to  
22 hearing, and specifically if there are areas  
23 where people who were providing were dual  
24 employee, one, and providing investment advisory  
25 services that meet the definitions of the

1 NORRIS

2 agreement, we're happy to discuss that. And if  
3 there should be a true-up, let's do a true-up.  
4 That's what we've been clamoring for since we  
5 first found out about this. And so definitely  
6 open to hearing what you have from a document in  
7 evidence standpoint.

8 Again, I'll go back to in December  
9 2020, the Debtor's CFO and Controller created a  
10 calculation of what the front office services  
11 should have been for 2020, and that was well  
12 after Trey Parker left and JP was appointed  
13 co-head of private equity and continued his  
14 normal role as associate counsel or whatever he  
15 was at HCMLP. But we haven't had the backup yet.  
16 Maybe it's already in there or maybe it's not,  
17 but if it's not, I would be curious on why Dave  
18 wouldn't have included that if HCMLP knew you was  
19 providing those services.

20 Q. So there was a group of people that  
21 started working on TerreStar after Trey left,  
22 right?

23 A. I don't know if "a group of people"  
24 is accurate. I mean, he is who I heard a couple  
25 of updates from. And, again, I don't know if

1 NORRIS

2 there is a material amount of time. I guess one  
3 hour a week -- sure, let's run the numbers. One  
4 hour divided by his sixty hours, it's 1.6 percent  
5 of his time. And if his pay is, let's just  
6 assume, I don't know, \$600,000. 9,999. We'll  
7 cut you a check for that amount. And our numbers  
8 we're showing are \$7.7 million. So I think we're  
9 talking about a small amount. But we're open to  
10 it. We've asked. We've asked for what we were  
11 paying for. We've asked many times over many,  
12 many months and haven't received it until  
13 discovery. And so we've been open all along to  
14 have those conversations and would love to do it.

15 When I say write that check, I say  
16 that somewhat sarcastically. We overpaid by  
17 7.6 million. So we can net it against at least  
18 the 7.6 million. Dave Klos' number is actually  
19 larger. He shows a larger amount. We'll get  
20 into damages when we talk with Mr. Morris. But  
21 we're not contending that we shouldn't pay for  
22 dual employees that are providing investment  
23 advisory services.

24 Q. Okay. But, again, you are not  
25 contending that what? I couldn't hear that last

1 NORRIS

2 part.

3 A. That we shouldn't pay for dual  
4 employees that are providing investment advisory  
5 services under the Payroll Reimbursement  
6 Agreement.

7 Q. Okay. So were there employees  
8 providing advisory services that aren't part of  
9 this list?

10 A. We don't believe there is.

11 Q. But didn't you just say JP Sevilla  
12 was providing advisory services?

13 A. Again, I don't -- advisory -- I  
14 wouldn't contend that at all, and I didn't say  
15 that. He was sitting on the board of a portfolio  
16 management company I believe that was already  
17 owned, that was already in operation, and he  
18 wasn't giving any recommendations, to my  
19 understanding, in advisory service on what we  
20 should do with TerreStar. He was acting in an  
21 operational or legal capacity. So we would  
22 contend that, no, that's not investment advice.  
23 He wasn't giving advice. He was providing  
24 information for the company, very standard from a  
25 legal and compliance perspective.

1 NORRIS

2 Q. Okay. Are you aware that five other  
3 employees got title changes the day Trey left?

4 A. I believe I saw that in the documents  
5 you sent last night, uh-huh.

6 Q. Okay. And just tell me again -- if  
7 you have already, I apologize -- but I'm just  
8 trying to understand why did this -- why did this  
9 all happen the day he left?

10 A. Yeah, again, I'll go back to our view  
11 is, look, you had someone that was high profile  
12 leave. He left when private equity had  
13 diminished, and there were a lot of employees who  
14 wanted time retained. And that was done to help  
15 them feel good about the opportunity, stick  
16 around. I think most of them probably did stick  
17 around. But that's -- you know, when someone  
18 leaves, sometimes you reappoint titles. And --  
19 but our view is we didn't see anything  
20 significant in any way from any of them from an  
21 investment advice standpoint.

22 Q. Okay. So, again --

23 A. Sorry. Go ahead.

24 Q. -- do the Advisors contend that these  
25 six individuals who got the title changes, for

1 NORRIS

2 those individuals their work didn't actually  
3 change, it was just their title?

4 A. Largely, yes.

5 Now, their work was -- their work was  
6 legal and compliance services, litigation  
7 support, and those were services that were paid  
8 for under the Shared Services Agreement.

9 Again, but I don't -- I don't have  
10 detailed knowledge. I haven't spoken to them  
11 regarding how their title changed. I wasn't  
12 prepared to really address what happened in their  
13 role. First time I saw this and was brought to  
14 my attention was the documents you sent last  
15 night. Wasn't on our radar at all because in our  
16 view their role did not change.

17 Q. Their role didn't change. Okay.

18 MS. WINOGRAD: Can we pull up  
19 Exhibit 35.

20 (Exhibit 35 marked for identification.)

21 BY MS. WINOGRAD:

22 Q. Okay. Have you seen this email  
23 before?

24 A. No.

25 Q. Okay. This is an email from Katie

1 NORRIS

2 Irving to Dave Klos, James Mills, Will Duffy,  
3 cc'ing Tim Cournoyer and JP Sevilla, right?

4 A. Yes.

5 Q. And it's dated March 3rd of 2020,  
6 right?

7 A. Looks like it, yes.

8 Q. And it's just less than a week after  
9 Trey departed the Debtor, right?

10 A. Yes.

11 Q. And it's just less than a week after  
12 Katie, Tim, and JP took on new titles with  
13 Highland, right?

14 A. I don't know that Katie or Tim. I  
15 believe that was in your materials, but I'll take  
16 your word for it if that's the case.

17 Q. Okay. Because I can show their title  
18 changes if you want.

19 A. I'll take your word for it.

20 Q. Okay. And the subject of this email  
21 is "Draft TerreStar Valuation," right?

22 A. Yes.

23 Q. What's the purpose of this email?

24 A. I have no idea. Houlihan Lokey  
25 helped provide third-party support. Seems like a

1 NORRIS

2 logical service here, something related to  
3 valuation, which we were paying Highland for  
4 under our Shared Services Agreement.

5 But I -- "any info you have on  
6 TerreStar opinions or its valuation." Looks like  
7 a very simple email requesting information  
8 regarding valuation.

9 Q. Okay. Is this a type of valuation  
10 analysis Trey would have been involved in when he  
11 worked at Highland?

12 A. I don't know. But Highland was  
13 performing valuation services of which part was  
14 Trey sat on the valuation committee and we were  
15 paying them for valuation services of which  
16 included the performance of various employees  
17 related to valuation.

18 Q. So it's fair to say he would have  
19 probably been cc'd on this email or otherwise  
20 included in some way?

21 A. I don't know. My guess is -- I can't  
22 speculate on that.

23 Q. Okay. But he was involved in  
24 TerreStar valuation analyses while he was working  
25 at the Debtor?

1 NORRIS

2 A. I'm not -- again, I don't -- I don't  
3 know the specifics of his involvement in the  
4 valuation process of TerreStar. I know he was  
5 involved with TerreStar from an investment  
6 perspective. He sat on the valuation committee.  
7 But I don't know particularly any specifics.

8 Q. Do you know if Katie had any  
9 involvement with TerreStar prior to Trey's  
10 departure?

11 A. I don't know.

12 Q. Do you know if -- do you know if Tim  
13 did?

14 A. I don't know. And I don't even  
15 recollect having any discussion with Tim after  
16 this on TerreStar in any way.

17 Q. Okay. So do you know if JP did?

18 A. Prior?

19 Q. Prior to his title change?

20 A. I'm not sure.

21 Q. Okay.

22 A. He may have. I think he may have,  
23 but I'm not sure. And I would say the legal team  
24 regularly provided support to investment  
25 professionals on agreement review, on

1 NORRIS

2 structuring. So it would be very realistic to  
3 think that JP and Tim had some involvement on  
4 TerreStar prior to that.

5 Q. Right. But this is more focused on  
6 investment advisory topics, right? This is --

7 A. I don't think so -- I'm sorry, go  
8 ahead.

9 Q. No, I was just going to say this is  
10 more about valuations rather than legal advice,  
11 right?

12 A. Yeah, but valuation is not investment  
13 advice. That's covered under back and middle  
14 office-type services which were provided under  
15 the Shared Services Agreement. It mentions  
16 valuation services in the Agreement. That's  
17 front and center of what shared services is,  
18 which that was across many different teams. The  
19 legal team had a lot to play on any given month  
20 related to valuation. In fact, legal and  
21 compliance, I believe, ran the valuation  
22 committee with Thomas Surgent and Jason Post,  
23 like, they were integral into the valuation  
24 process.

25 Q. Okay. So Katie and Tim and JP, are

1 NORRIS

2 you saying they would have been involved in this  
3 type of email before Trey left?

4 A. I don't know.

5 Q. Do you know if these individuals on  
6 this email continued to provide services for  
7 TerreStar in April?

8 A. In April?

9 Q. Of 2020. So like the following  
10 month?

11 A. I don't know. My only personal  
12 knowledge was Katie was involved in the  
13 beginning, and I haven't heard anything else from  
14 Katie on TerreStar. It's been JP. So I haven't  
15 actually heard from Katie in a very long time. I  
16 don't even know if she's still employed by  
17 Skyview or Highland.

18 Q. Okay.

19 A. I don't know.

20 MS. WINOGRAD: Can we show  
21 Exhibit 41.

22 (Exhibit 41 marked for identification.)

23 MS. CANTY: Give me just one second.

24 BY MS. WINOGRAD:

25 Q. Okay. Do you see the document?

1 NORRIS

2 A. Yes.

3 Q. Okay. So this is an email from Katie  
4 Irving on April 6th of 2020, right?

5 A. Yes.

6 Q. Okay. So she says, "Good afternoon,  
7 this looks fine. Approved. Thank you."

8 What exactly is she approving?

9 A. I don't know. First time I've seen  
10 the email.

11 Q. Okay. So it says "3/31 TerreStar  
12 analysis." Do you have any idea what this could  
13 be referring to?

14 A. Let me read here. "Tim/JP/Katie,  
15 Please find the draft 3/31 TerreStar valuation  
16 attached. The equity mark movement was driven  
17 by: Updated financials, debt balance increased  
18 2.1 million; updated transaction weightings, due  
19 to the passage of time."

20 "The debt mark decreased slightly due  
21 to 0.25 percent."

22 "See page 16 for the enterprise value  
23 conclusion."

24 "Term Loan."

25 "Please let us know if you have

1 NORRIS

2 comments. As a reminder, we'll need a simple  
3 approval from you before incorporating these  
4 marks in the NAVs for the retail funds."

5 "Simple approval" is what this looks  
6 like, of -- in order to incorporate into the  
7 NAVs, based on the email.

8 But, again, I'm not on the email.  
9 I've never been -- it's been many, many years  
10 since I was involved in the valuation process,  
11 but standard valuation-related work.

12 Q. Okay. Do you know if Trey ever  
13 approved valuations like this?

14 A. I'm not sure.

15 Q. Okay. So for the work that Katie and  
16 JP and Tim and the total of six employees we  
17 discussed, they were working on TerreStar issues  
18 after Trey left, right? Whether we want to call  
19 those investment advisory or not, right?

20 A. I mean, issues, I see this -- all  
21 you've shown me so far is an mail saying, can you  
22 provide me valuation data and then looks fine,  
23 approved. If that's -- and it's just Katie. I  
24 don't have any -- there is no evidence who  
25 provided things. The others are working on it.

1 NORRIS

2 So I don't know.

3 Q. Tim and JP were cc'd on all these  
4 emails. You already said JP was involved in  
5 TerreStar issues. So it's fair to say there were  
6 people working on TerreStar after Trey left,  
7 right, on some level?

8 A. Yeah. And, again, here we've got  
9 value -- very valuation-specific items.  
10 And -- but your comment was a team of five, and  
11 here is two. I know JP. Katie had a couple of  
12 emails.

13 Q. Okay. So do --

14 A. I have no evidence to support -- or  
15 unless you have it, pull it up on Tim's  
16 involvement.

17 Q. Okay. Well, Tim was cc'd on these  
18 emails. Do you see his name? It says to Tim on  
19 April 6?

20 A. Yeah, I -- just, I mean, I get sent  
21 emails and cc'd on emails all the time, and  
22 doesn't mean that I did work on it.

23 Q. Okay. So is it the Advisors'  
24 contention that whatever work Tim and JP and  
25 Katie did on TerreStar, the Advisors shouldn't

1 NORRIS

2 have to pay for it under the PRAs?

3 A. I think we would have to  
4 understand -- I mean, this is the first time we  
5 even saw this last night, the document. It's not  
6 something we had discussed or prepared for in  
7 detail. I don't know if it's part of the topics  
8 that -- I don't know the level of work they put  
9 into it. So I don't know what they were doing.  
10 I don't have background. There's no -- other  
11 than a couple of emails you showed me. I have no  
12 personal experience, and I don't have any other  
13 based on my preparation.

14 MS. WINOGRAD: Okay. I think that I  
15 want to take a little break right now before we  
16 move on. So let's just plan on coming back at  
17 3:10, if that works for everybody.

18 THE WITNESS: Yeah.

19 (A break was taken from 1:58 p.m. to  
20 2:18 p.m.)

21 BY MS. WINOGRAD:

22 Q. So I may have misunderstood you, but  
23 you had talked about an analysis conducted by  
24 Frank Waterhouse and Dave Klos in 2020. I think  
25 it may have been December of 2020. Can you give

1 NORRIS

2 me the Bates number for that document?

3 THE WITNESS: Davor, I don't know  
4 Bates numbers. Is that the ACL thing, or is that  
5 something else?

6 MR. RUKAVINA: Ask again, please,  
7 Ms. Winograd.

8 MS. WINOGRAD: Yeah, there was --

9 THE WITNESS: You provided it. All I  
10 remember I sent him ACL-025012. Is that the  
11 Bates? I don't know.

12 MR. RUKAVINA: It's one of them.

13 It's been produced in several different numbers,  
14 but that's it.

15 BY MS. WINOGRAD:

16 Q. Okay.

17 A. We don't have the underlying support,  
18 as I've mentioned several times here. And I  
19 believe Mr. Morris said before you got back on  
20 that he would get that to us by Monday.

21 MR. MORRIS: Yeah, I promise to get  
22 that to you.

23 Can you just read it again, slowly,  
24 Mr. Norris, so I can tie it together?

25 THE WITNESS: Yeah. ACL025012.

1 NORRIS

2 MR. RUKAVINA: Thanks so much.

3 A. I believe Mr. Rukavina also provided  
4 file an actual file name, an Excel file name for  
5 the underlying support.

6 BY MS. WINOGRAD:

7 Q. Okay.

8 A. Which we haven't received yet, but so  
9 you can help in finding that.

10 Q. You had also mentioned that Dave Klos  
11 said that a true-up couldn't be done in 2019  
12 because of the bankruptcy, right?

13 A. So he told -- he told us that a  
14 true-up was not done because of the automatic  
15 stay. They were told, and they brought this to  
16 the attention of DSI and Highland, Highland's  
17 counsel and I believe Mr. Seery, because of the  
18 automatic stay. That was what they pulled up.

19 Q. Is that in writing?

20 A. I don't believe it's in writing, but  
21 myself and DC Sauter heard directly from him and  
22 Mr. Waterhouse on that matter.

23 MS. WINOGRAD: Okay. Can we go to  
24 Exhibit 13, please.

25 (Exhibit 13 marked for identification.)

1 NORRIS

2 BY MS. WINOGRAD:

3 Q. Okay. Are you familiar with this  
4 document?

5 A. Yes, I believe I have it here. This  
6 is just your response to our -- our claim; is  
7 that right?

8 Q. This is the Advisors --

9 A. Oh, it's ours, yes. This is -- yes.  
10 If you scroll up, it was filed on 12-22?

11 Q. Yes.

12 A. Yes.

13 MS. WINOGRAD: And so can we scroll  
14 to page -- pdf page 3, please.

15 Actually, let's go to page 8. Okay.  
16 Just go up a little bit. A little bit more.

17 BY MS. WINOGRAD:

18 Q. Okay. So do you see here it says --  
19 let me ask it this way: The Advisors contend  
20 that they -- that they paid under the agreement  
21 due to a mistake of facts, right? Under the  
22 Payroll Reimbursement Agreement due to a mistake  
23 of facts, right?

24 A. We contend that we -- we didn't pay.  
25 We were relying on Highland for those payments.

1 NORRIS

2 Q. Right. But you're saying that -- the  
3 Advisors are saying that they paid because they  
4 were -- the Advisors contend that they overpaid  
5 under the PRAs for employees that were no longer  
6 at the Debtor, right?

7 A. Because we were relying on the Debtor  
8 to determine that, yes. I'm sorry, maybe ask  
9 your question one more time.

10 Q. Okay. So do the Advisors contend --  
11 don't the Advisors contend that they overpaid  
12 under the Payroll Reimbursement Agreements  
13 because they were paying for employees who were  
14 no longer at the Debtor?

15 A. I believe that's a part of it. I  
16 think this is in our response. This talks  
17 specifically about the voluntary payment rule in  
18 our stand here, but that's a part of it, that we  
19 overpaid for --

20 Q. But with regard to the overpayments  
21 for the Payroll Reimbursement Agreements, the  
22 core of the Advisors' claim is that they overpaid  
23 because they were paying for employees who were  
24 no longer employed at the Debtor, right?

25 A. The core issue is we were relying on

1 NORRIS  
2 Highland to make the payments, and we were  
3 relying on Highland to prepare the calculations  
4 appropriately and to seek reimbursement for  
5 employees that provided actual services and were  
6 dual employees. So, yes, we were paying. And  
7 you'll see in our calculation there's -- and  
8 based on the schedule we discussed, we were  
9 paying for employees that were no longer  
10 employed.

11 Q. Okay. So let's go to paragraph 21  
12 quickly. It says, "Here, the Advisors were not  
13 aware of all of the facts until late  
14 November 2020." Do you see that?

15 A. I do.

16 Q. Okay. So are the facts that the  
17 Advisors were not aware of that certain employees  
18 were not employed at the Debtor?

19 A. No. And I've answered that multiple  
20 times for you. We were aware that they were no  
21 longer employed. We just weren't aware that  
22 Highland had been paying the same amount for  
23 those employees that are no longer here, or no  
24 longer employed.

25 Q. Okay. Prior to the termination of

1 NORRIS

2 the Payroll Reimbursement Agreements, were the  
3 Advisors ever in breach of their obligations to  
4 the retail funds?

5 A. The Advisors meaning us in breach of  
6 our duties to the retail funds?

7 Q. Uh-huh.

8 A. No.

9 Q. Okay. Did the Advisors ever tell the  
10 retail board that Highland was in breach of any  
11 of its obligations under the Payroll  
12 Reimbursement Agreements?

13 A. Once we found out, we let the board  
14 know that we were paying for employees that were  
15 no longer employed, or they have been continuing  
16 to charge the same amount that they had been  
17 charging pre-bankruptcy even though they were no  
18 longer employed.

19 Q. Okay. Who at the Advisors told them?

20 A. Who would we have told?

21 Q. No, who at the Advisors told the  
22 retail board?

23 A. It would have been DC Sauter or  
24 myself. In -- we had, as I mentioned, a number  
25 of board meetings throughout this time period.

1 NORRIS

2 Q. So when did the Advisors tell the  
3 retail board that Highland was in breach?

4 A. It would have been sometime -- DC and  
5 myself found out in late November/early December  
6 when we found out they continued to pay these  
7 amounts, and there would have been multiple  
8 conversations thereafter we had board meetings in  
9 December. We had multiple board meetings in  
10 January, had multiple board meetings in February,  
11 and it was a topic of conversation.

12 Q. So did the Advisors tell the retail  
13 board, then, in December of 2020?

14 A. I don't remember specifically.

15 Q. Okay. But it was after -- it was  
16 December 1st -- it was after December 1st?

17 A. I don't remember the exact time  
18 period, but all of this happened, and once we  
19 knew -- it wasn't -- as soon as we find out -- we  
20 needed to find out the details, and we had been  
21 asking for specific details for quite a while.  
22 But I don't remember the exact time period or the  
23 exact date, but we had board meetings in December  
24 multiple board meetings in January, board  
25 meetings in February, and it was discussed

1 NORRIS

2 multiple times with the board.

3 Q. Okay. Is there any document  
4 reflecting the Advisors telling the retail board  
5 this?

6 A. I don't know. I believe we provided  
7 all documents that are responsive. I don't know  
8 if there's -- we keep minutes of board meetings.  
9 I don't know if that was included.

10 Q. And I apologize if this covers  
11 something you already said, but just for my own  
12 clarity, what exactly did the Advisors tell the  
13 retail board?

14 A. Yeah, we told them -- we explained  
15 the key different -- the key agreements which is  
16 the Shared Services Agreement and the Payroll  
17 Reimbursement Agreement. They were very aware we  
18 had to hire Jason Post. In fact, that was at  
19 their urging, knowing that we were continuing to  
20 pay the same amount to Highland under the Shared  
21 Services Agreement. So that was a very clear  
22 communication. In addition, we had told them  
23 that we were paying for certain investment  
24 professionals under the Payroll Reimbursement  
25 Agreement for the schedules based on employees

1 NORRIS

2 largely that no longer were employed. So that  
3 was communicated to the board.

4 Q. Okay. So the Advisors told the  
5 retail board about the -- about Highland's breach  
6 under the Payroll Reimbursement Agreements at the  
7 same time they told the retail board about the  
8 breach under the Shared Services Agreements?

9 A. And, again, breach, I don't know if  
10 you're using the right term there.

11 Q. Let me rephrase it. That Highland  
12 wasn't performing under the --

13 A. Again, our claim isn't that you  
14 weren't performing all services under the  
15 agreement, we were just being billed the wrong  
16 amount, right? So -- but the board was very  
17 aware of our concerns and they, themselves, had  
18 concerns about the services provided and  
19 expressed those. And that was a meaningful part  
20 of the conversation, so much, in fact, that they  
21 had concerns about allowing us to hire Skyview,  
22 who was hired -- created from the old Highland  
23 employees because they were concerned it was  
24 going to be the same people providing shared  
25 services, and they had concerns about the

1 NORRIS

2 services that were provide before. So it was a  
3 two-way conversation and understanding with our  
4 board throughout this process.

5 Q. Okay. So -- and I want to get  
6 straight what the Advisors' claim is with the  
7 PRAs. The Advisors are contending not that  
8 Highland -- they are not contending that Highland  
9 didn't perform under the PRAs, they are -- right?

10 A. And I don't know if performing under  
11 an agreement sounds like a legal term. I don't  
12 know that I'm able to answer or make that  
13 determination, but it's very simple. We  
14 overpaid. We are to reimburse for actual  
15 employees, and so our contention is we overpaid  
16 for the services provided. This was not a you  
17 provide the services you get paid regardless.  
18 It's we're reimbursing you for actual costs of  
19 those employees. And so they were charging us  
20 too much money, and we have provided a  
21 calculation of what we believe that is.

22 Q. Okay. But the Advisors contend that  
23 the services were being provided, right?

24 A. There were investments -- we are  
25 saying there's not investment advisory services

1 NORRIS

2 of dual employees. And, in fact, this report we  
3 send shows there's still dual employees providing  
4 investment advisory services. So it was a use  
5 it, right, and pay. And so there was not a,  
6 okay, you're no longer providing these services.  
7 Same thing with shared services with the  
8 agreement HCMFA was paying a cost plus 5 percent,  
9 and it should just be the cost, not a stagnant  
10 amount based on pre-bankruptcy billings.

11 Q. Okay. Because I'm just trying to  
12 understand if the Advisors are saying that the  
13 investment advisory services were being performed  
14 by Highland but that the specific employees just  
15 weren't providing them and that that was why  
16 Highland breached under the PRAs.

17 A. The services changed dramatically,  
18 the amount of services provided, but that was  
19 fully functional under the agreement. You could  
20 provide this level of service, and we would pay  
21 this level plus 5 percent. Or you could provide  
22 this level of service, and we would provide this  
23 plus 5 percent.

24 And naturally the head count shrunk  
25 dramatically at Highland pre-bankruptcy and

1 NORRIS

2 through the bankruptcy as people left, and there  
3 were investment advisory services that continued,  
4 and there were a number of them that did not.  
5 And that was -- our view is that was what the  
6 agreement contemplated. You pay for the  
7 reimbursement of or the services provided. And  
8 that continued -- the services continued, again,  
9 at a lower level, but we were overcharged and  
10 Highland paid for us too much.

11 Q. Okay. So are the Advisors contending  
12 that they overpaid for services that they weren't  
13 receiving under the PRAs, that they overpaid for  
14 employees that weren't working there under the  
15 PRAs, or both?

16 A. The PRAs -- the services provided are  
17 investment advisory services. Those -- the  
18 number of people and actions providing those was  
19 significantly reduced. The head count was  
20 significantly reduced. And we were paying based  
21 on the old rates. So it's -- the services  
22 provided is not services detailed in there other  
23 than dual employees, and there's not a  
24 requirement that they have to have a certain  
25 number of dual employees. We were overpaying

1 NORRIS

2 because we were paying for employees that were no  
3 longer employed, and there was not a new person  
4 replacing that other -- that other  
5 responsibility.

6 Q. Okay. And are you -- are you aware  
7 in your individual capacity that in the fall of  
8 2020, the retail board conducted an annual review  
9 of whether to renew its agreement with the  
10 Advisors?

11 A. Yes.

12 Q. Okay. And this is called the 15(c)  
13 review, right?

14 A. Yes.

15 Q. Okay. And you're aware that part of  
16 this involved an analysis of the quality of  
17 services that the Advisors are performing to the  
18 retail funds, right?

19 A. Yes.

20 Q. Okay. Did you participate in that  
21 annual review in your --

22 A. I did.

23 Q. -- individual capacity?

24 A. I did.

25 Q. What parts did you participate in?

1 NORRIS

2 A. I participated in the board meetings  
3 where they were discussed, I gave business  
4 updates. My job is running the sales and  
5 distribution effort. So I provided updates on  
6 our sales successes. I was involved in the  
7 conversations throughout. We relied heavily on  
8 HCMLP's employees in regards to the services and  
9 the shared services, but I was involved in the  
10 conversations. Not all the conversations but the  
11 board meetings that were 15(c) we discussed.

12 Q. And so is it fair to say you're  
13 familiar with the board minutes from those  
14 meetings?

15 A. I would be familiar with what we  
16 discussed, but the board minutes, I don't know  
17 that I've read board minutes.

18 Q. Okay. So just going back to the  
19 meetings themselves and the fact that you were  
20 there, was there anything -- was there anything  
21 inaccurate that was said at those board meetings?

22 A. Inaccurate?

23 Q. Uh-huh.

24 A. Not that I know of.

25 Q. Okay. And are you familiar with the

1 NORRIS

2 reports that the Advisors sent to the retail  
3 board in connection with the 15(c) review?

4 A. The memos, is that what you mean?

5 Q. Yes, the memos.

6 A. I'm generally familiar with them,  
7 yes.

8 Q. Okay. Are you aware of anything  
9 inaccurate in those memos?

10 A. I haven't read the memos, so -- and  
11 you are asking me in my personal capacity, I  
12 believe, so I'm not aware. Again, I haven't read  
13 them. I may have read portions of them, but I  
14 didn't read the whole memos.

15 MS. WINOGRAD: Okay. I might be  
16 close to finishing up, I just want to take --  
17 let's take like a -- let's take like a  
18 three-minute break. Let's come back at 3:40. I  
19 just want to look through some documents.

20 THE WITNESS: Okay.

21 (A break was taken from 2:36 p.m. to  
22 2:41 p.m.)

23 BY MS. WINOGRAD:

24 Q. Do you know if, as the 30(b)(6)  
25 witness, between the petition date and the date

1 NORRIS

2 of the administrative claim, did the Advisors  
3 ever say any -- did the Advisors ever make any  
4 inaccurate statements to the retail board?

5 A. None that I know of that would have  
6 been intentional. And I say that "intentional"  
7 because also a point in time, it's important to  
8 note that particularly in this fall 2020 period,  
9 we mentioned the 15(c) process, we had -- it was  
10 more of an iterative process, and we were going  
11 through usually the board would approve things  
12 over two meetings because of everything going on  
13 with the Shared Services Agreement and the  
14 bankruptcy, it lasted longer. And also during  
15 this time period, the tenor of the entire  
16 relationship with Highland started to change.  
17 And so some statements that may have been given  
18 in September, October, may have changed  
19 dramatically by November once the services had  
20 changed, or once things had changed. So I don't  
21 think there was anything intentional.

22 I know that there was a question of  
23 some -- some documents that had been provided by  
24 Frank Waterhouse that were related to a note.  
25 And it mentioned -- it was -- in looking back at

1 NORRIS

2 it, we looked at those, the numbers didn't make  
3 sense to the Advisors. And I don't remember all  
4 the particulars, but I think that came up in  
5 another case, and there was a contention that  
6 that wasn't completely accurate, but it wasn't an  
7 intentional item.

8 MS. WINOGRAD: Okay. So I'm going to  
9 move to strike that.

10 BY MS. WINOGRAD:

11 Q. Are you aware today as you sit here  
12 of any inaccurate statements that were made to  
13 the retail board between the petition date and  
14 the date of the admin claim filing?

15 A. In all instances we tried to be a  
16 hundred percent forthright with the board. The  
17 accuracy at the time of each submission was --  
18 our view was things were accurate.

19 Q. So earlier when I asked you who you  
20 spoke to to prepare for today's deposition as a  
21 30(b) (6) witness, you named a few people. And  
22 correct me if I'm wrong, but I heard -- I heard  
23 James Dondero, Collins, Vitiello, Mitts. And was  
24 it Fuller? I couldn't hear --

25 A. Yeah, Fullmer. Kevin Fullmer.

1 NORRIS

2 Q. Okay. And am I missing anybody that  
3 you said you spoke to?

4 A. DC Sauter, my outside counsel. I got  
5 some numbers from Hayley Eliason, who is in  
6 accounting. I think that's everyone.

7 Q. Okay. And you said that you reviewed  
8 a number of documents, right?

9 A. I did.

10 Q. Okay. So based on the people that  
11 you spoke to, the people that you just named, and  
12 all of the documents reviewed, you answered my  
13 questions today with all of the facts that you  
14 had knowledge of, right?

15 A. Yes.

16 Q. You answered my questions to the best  
17 of your knowledge today, right?

18 A. I did.

19 Q. Okay.

20 A. And I think I said it I don't know  
21 how many times, but, you know, we unfortunately  
22 did not have access to Mr. Waterhouse, and that  
23 would have been helpful. At his attorney's  
24 suggestion and requirement, we couldn't prep or  
25 use him or talk to him in this. And then

1 NORRIS

2 obviously we couldn't talk to Mr. Klos. And  
3 they'll both be deposed, and we'll find more  
4 additional information.

5 Q. Okay. So we're finishing up here,  
6 and the last thing I want to ask you is: Is  
7 there any answer that you gave me today that you  
8 want to supplement or amend?

9 A. I don't think so. I probably talked  
10 more than you wanted me to. I think that -- I  
11 think that covers the items.

12 MS. WINOGRAD: Okay. Well, that's  
13 all I have. So thank you very much, Mr. Norris.  
14 And I'm going to let John Morris now take this  
15 over. So I will say goodbye. Thank you again.

16 THE WITNESS: Thank you.

17 EXAMINATION

18 BY MR. MORRIS:

19 Q. Hi, Mr. Norris.

20 A. Hello.

21 Q. So I just want to cover the singular  
22 topic of damages.

23 A. Yes.

24 Q. Are you aware that damages was one of  
25 the topics on the 30(b) (6) notice?

1 NORRIS

2 A. Yes.

3 Q. And are you prepared to share with me  
4 all information that you have that relates to  
5 that topic?

6 A. I am.

7 Q. Okay. The Advisors' administrative  
8 claim is based on its contention that Highland  
9 has breached two different Shared Services  
10 Agreements and two different Payroll  
11 Reimbursement Agreements; do I have that right?

12 MR. RUKAVINA: Objection. Form.

13 A. Yeah, again, the language I talked  
14 about earlier is breached. I, again, believe  
15 that the issue at hand is that we've been paying  
16 for services or overpaying for services that we  
17 never received and that Highland, who we had  
18 outsourced and relied on for payment of these,  
19 continued to pay at a higher rate. So that's  
20 the --

21 BY MR. MORRIS:

22 Q. So you are uncomfortable using the  
23 word "breach"? Do I have that right; you don't  
24 want to use that word?

25 A. Yeah, again, I'm not an attorney.

1 NORRIS

2 And as I look at this, there were services  
3 provided under the Shared Services Agreement and  
4 the intent, again, was to be -- particularly the  
5 HCMFA and then payroll reimbursement the  
6 cost-plus agreement, and the view here is there  
7 were services provided -- right -- and they  
8 performed under those agreements. A lot of good  
9 people working hard. It was just that we were  
10 billed at a prepetition rate for services that  
11 were postpetition and employees that were no  
12 longer there.

13 Q. Let's take them one at a time.

14 Are you -- do you have an  
15 understanding of HCMFA's claims under the Shared  
16 Services Agreement?

17 A. I do.

18 Q. Okay. Does HCMFA claim that Highland  
19 breached its obligations under the Shared  
20 Services Agreement?

21 A. I have the same answer I just  
22 provided on breach.

23 Q. Can you just answer my question.  
24 Does HCMFA contend that Highland breached any  
25 obligation under the Shared Services Agreement?

1 NORRIS

2 A. Well, particularly if you look at the  
3 responsibility to handle accounting and payroll,  
4 we relied on them for those calculations, and  
5 particularly related to this agreement, there was  
6 overbilling and overpayments. But whether you  
7 call that a breach or not, that's what we  
8 contend.

9 Q. Okay. Are there any other breaches  
10 that HCMFA contends Highland did with respect to  
11 the Shared Services Agreement?

12 A. No. Again, I would point out that  
13 discovery is still ongoing. We haven't talked to  
14 Mr. Waterhouse. But as we sit here today, it's  
15 very simple, straightforward. We paid for  
16 services we didn't receive.

17 Q. Okay.

18 A. And we were overbilled, we overpaid  
19 for whatever reason. Those are the damages.

20 Q. Okay. I just want to make sure that  
21 we're on the same page here. I'm only talking  
22 about HCMFA, and I'm only talking about the  
23 Shared Services Agreement. Do you understand  
24 that?

25 A. I do.

1 NORRIS

2 Q. Okay. How much do the -- does HCMFA  
3 contend it is entitled to recover from Highland  
4 under the Shared Services Agreement?

5 A. Yeah, so under the Shared Services  
6 Agreement, in going into this, there is two  
7 aspects of this. One is the calculation. That  
8 is the payroll reimbursement. We had to hire  
9 additional employees to compensate for reduction  
10 in services from Highland. And so that's the  
11 damages. There was a hire of Rob Harris, an  
12 outside attorney who came in, and hiring of Jason  
13 Post. Jason Post split his duties between HCMFA  
14 and NexPoint Advisors.

15 In addition, those are the direct  
16 costs that we had to pay. The others are, as you  
17 will recall, you provided a calculation for  
18 Mr. Klos on the amount of Shared Services  
19 Agreement payments for overpayments. So there's  
20 a number on there that shows a \$1 million gain  
21 unrelated to the Shared Services Agreement, and  
22 that's the damages that we assert related to the  
23 Shared Services Agreement.

24 One million was an annual number, and  
25 so you take 16 months, which is the period, and

1 NORRIS  
2 amounts to approximately 1.3 million. And that  
3 is split between HCMFA. It has it on its  
4 schedule, and I'll point you back to it. We  
5 haven't received the support yet which you said  
6 you would provide by Monday, and the amount  
7 listed for a point in time, the annual  
8 profitability at that time was 0.4 million for  
9 NexPoint Advisors and HCMFA \$600,000. So if  
10 we're just talking HCMFA, it's \$600,000.

11 The additional employees is \$425,000  
12 between Rob and Jason Post. And we can talk  
13 about allocations, but an even split between the  
14 two entities is a logical split.

15 Q. I'm sorry, I'm going to try this a  
16 little bit different.

17 Can you give me the total number, and  
18 then we'll break it down? What is the total  
19 amount that HCMFA claims it is due as a result of  
20 Highland's either breach or failure to perform  
21 under the Shared Services Agreement?

22 A. Yeah. So it is one -- HCMFA, I've  
23 got an aggregate number of 1.3 million, which is  
24 HCMFA \$600,000, based on Dave Klos' spreadsheet,  
25 which is an annual number, which is \$800,000. So

1 NORRIS

2 \$800,000 for overbilling of services that were  
3 not received, right, for overpaying. And then  
4 hiring of additional employees is \$212,000 for  
5 HCMFA and \$212,000 for NexPoint Advisors. And I  
6 apologize for the -- I have the overall number  
7 for both entities, 1.3 million plus 425,000, and  
8 that is split between the two entities.

9 Q. So the 1.3 million is total for both  
10 entities, right?

11 A. Sorry, the 1.3 is related to  
12 overpayment for the shared services, and 425,000  
13 for the additional employees. And -- maybe that  
14 wasn't --

15 Q. So let me try again.

16 A. Yeah, yeah.

17 Q. You said it's 600,000 from the cost  
18 analysis for HCMFA?

19 A. Related to the shared services for  
20 one year, and it was 16 months, so it was  
21 800,000.

22 Q. Okay. 800?

23 A. 800.

24 Q. And then how much -- is the same  
25 analysis done for NexPoint?

1 NORRIS

2 A. Yes. And that's \$500,000 for  
3 NexPoint.

4 Q. Okay. So -- and then you took the  
5 425 for Harris and Post, and you split it between  
6 the two?

7 A. Correct.

8 Q. Okay. So that -- do I have this  
9 right, for HCMFA the total claim has two  
10 components, one of which is \$800,000. That comes  
11 from the Klos analysis. And the other is  
12 \$212,000, which is one-half of the total cost of  
13 Harris and Post for a total of \$1,012,000?

14 A. Yes.

15 Q. Perfect.

16 Does HCMFA rely on anything other  
17 than the cost analysis to support the \$800,000?  
18 Are there any other facts that you're aware of  
19 that support that number?

20 A. This -- obviously this is the best  
21 available information prepared by the Debtor  
22 employees at this time and, you know, they were  
23 the closest to the numbers. We don't have the  
24 backup for this, so we would love to see more.  
25 But we're going to be able to talk to Mr. Klos

1 NORRIS  
2 and Mr. Waterhouse as well. We tried to  
3 receive -- you sent us invoices that we barely  
4 got with passwords protected. We got the  
5 passwords removed, that had invoice amounts and  
6 dollar amounts paid and tried to back into  
7 numbers. But ultimately don't have the level of  
8 info that Mr. Klos and Mr. Waterhouse do, and  
9 their analysis here I think is the best available  
10 information.

11 Q. Okay. So subject to any further  
12 information you may obtain, HCMFA's sole basis  
13 for the \$800,000 number is the cost analysis,  
14 correct?

15 A. That's -- that's one analysis. And  
16 also the analysis that we knew we were getting  
17 less service during this time period but paying  
18 the same dollar amount. So we were paying -- we  
19 did additional digging in those invoices you  
20 provided, and in some of those months we were  
21 paying for employees that we know were not  
22 providing us any services. So HCMFA is at cost  
23 plus 5 percent and the response and discussion we  
24 had with Mr. Klos was, well, we just continued to  
25 charge the same amount. So it matches up with

1 NORRIS

2 our understanding and our research that we were  
3 being overbilled, and Dave Klos already came up  
4 with the calculation. So it's our understanding  
5 of the situation combined with his analysis.

6 Q. Okay. And did HCMFA ever make any  
7 attempt to quantify the dollar value of the loss  
8 of services that it sustained?

9 A. Yeah. And we did an analysis. We  
10 actually -- and I mentioned this earlier, but we  
11 included -- we had to incur additional legal  
12 bills. We had to incur additional time of  
13 Mr. Sauter who was spending significant amounts  
14 of time that otherwise would have been litigation  
15 support and legal services, and we did quantify  
16 that. However, we chose at this time to exclude  
17 those. So we're not seeking the additional  
18 damages or costs that we incurred in K&L Gates  
19 and Davor's firm and D.C.'s time to maintain  
20 attorney-client privilege.

21 Q. So the \$800,000 piece from Mr. Klos,  
22 is that \$50,000 a month?

23 A. In his calculation he has \$600,000  
24 divided by 12, \$50,000 a month.

25 Q. Okay. And do you understand what the

1 NORRIS

2 basis for that \$50,000 monthly figure is?

3 A. No. We're waiting on the backup  
4 from -- from you, from Mr. Klos. Now, I can  
5 speculate because we have other invoices that we  
6 got from you that show we were paying, for  
7 example, for compliance and legal services that  
8 we know were not performed. We were paying for  
9 bonuses for insiders that were not giving  
10 bonuses. We were paying for a number of  
11 things -- and we can speculate. Again, that's  
12 all speculation.

13 Q. I'm going to be rude and interrupt  
14 and say -- I think Mr. Rukavina will join me in  
15 saying we don't want you to speculate.

16 MR. MORRIS: So I'm going to move to  
17 strike and just ask the question again very  
18 simply.

19 BY MR. MORRIS:

20 Q. Does HCMFA know the basis today of  
21 the \$50,000 monthly figure that Mr. Klos arrived  
22 at?

23 A. No.

24 Q. Thank you.

25 Is it -- is it HCMFA's contention

1 NORRIS

2 that the diminished services from Highland were  
3 equal from the petition date until the end of  
4 2020? Was it constant over that period of time?

5 A. No, it -- it -- as I had discussed  
6 earlier in the deposition, things changed over  
7 time, right? And the quality of service changed  
8 over time. The number of employees serving us  
9 was reduced over time. So it was over time  
10 reduction and quality of services -- or not  
11 quality but the actual services provided were  
12 reduced.

13 Q. And, in fact, for the first few  
14 months of the bankruptcy, Mr. Dondero retained  
15 control of both the Advisors and Highland,  
16 correct?

17 A. I'm not sure what the first few  
18 months was from a legal perspective. I wasn't  
19 involved in November and December, January prior  
20 to Jim completely ceding control. So I don't  
21 know what the mechanism was.

22 Q. I think the pleading says that the  
23 diminishment of services began with Mr. Seery's  
24 directive in July of 2020. Do I have that right?

25 A. I'd have to -- you have to pull it

1 NORRIS

2 up. I don't know that that was the beginning,  
3 but that was -- there were certain things that  
4 very specifically were diminished at that point.

5 Q. Okay. Did the -- does HCMFA contend  
6 that Highland failed to provide any services  
7 prior to July of 2020?

8 A. There were certainly services that  
9 were not provided at the same level as  
10 pre-bankruptcy. And, you know, that's -- that's  
11 very clear. The level of service dropped off.  
12 But, again, the HCMFA agreement is a cost plus 5  
13 percent. There was a lot of things we had to do,  
14 even before July, that required additional work  
15 on our end and we filled it. Right?

16 And we were all working towards a  
17 peaceful resolution. I believe everyone thought  
18 there was going to be an amicable resolution,  
19 even Mr. Seery, and so everyone did their best  
20 effort, but it was -- but there were some things  
21 that were not provided.

22 There were people that I interacted  
23 with that I never saw. Highland wasn't coming in  
24 to the office. We were. I know there was  
25 COVID-related items, but the level of interaction

1 NORRIS

2 and service dropped off.

3 Q. When did the drop-off begin?

4 A. When you filed for bankruptcy.

5 Q. Okay. Can you tell me how the filing  
6 for bankruptcy, what specific services that  
7 Highland failed to provide on the day it filed  
8 for bankruptcy?

9 A. Again, service -- services provided  
10 is we're paying for the services that are  
11 provided. Right? It's a cost plus 5 percent  
12 here. So go through the chain, everything became  
13 harder after the bankruptcy filing. You had, for  
14 example, PR, legal, litigation support. Those  
15 people were all wrapped up in all the other  
16 stuff, and so they were providing less of a  
17 service for what we were doing.

18 It was -- you had the same number of  
19 people -- actually you had far less, because  
20 people started to quit, and there weren't large  
21 hires to replace that. So just naturally there  
22 was a -- across all of the services, a diminished  
23 impact.

24 Q. So it's HCMFA's contention that the  
25 moment Highland started -- filed for bankruptcy

1 NORRIS

2 that -- withdrawn.

3                   Based on the information you have  
4 today, it's HCMFA's contention that from the  
5 moment Highland filed for bankruptcy it ceased to  
6 provide services on a monthly basis that were  
7 valued at \$50,000, and that monthly valuation of  
8 loss of services continued until the end of  
9 December 2020. Do I have that right?

10                  A. Again, we're taking Dave Klos's  
11 calculations. We need to see the backup, because  
12 we don't have an insight into your actual  
13 services you billed us for, which is a key  
14 component. What were you actually providing and  
15 what were we paying.

16                  We were paying for a prepetition  
17 amount for actual services plus 5 percent, yet  
18 they continued to bill us for the work that was  
19 done thereafter.

20                  And, again, this is not getting too  
21 complex. Here is Mr. Klos's analysis showing --  
22 related to both entities' overall gain. And  
23 there is other things in there that we could  
24 argue, but that's -- that's the simple analysis.

25                  Q. Okay. I'm just asking you as the

1 NORRIS

2 30(b) (6) witness charged with the responsibility  
3 of answering questions about damages, what  
4 HCMFA's position is. Do you understand that?

5 A. I do.

6 Q. Okay. When did HCMFA first learn  
7 that Highland was providing less service?

8 A. As I mentioned, it was ongoing  
9 throughout. It was -- we knew it was happening,  
10 but all the way up through that point, from day  
11 one on, the goal was to have a quick resolution  
12 in this. You were even working for Mr. Dondero,  
13 right? He hired you.

14 And then things changed. Right?  
15 There was a gradual iterative process. And even  
16 until late 2020 we continued to work. Everyone  
17 worked hard. We tried to resolve things. We  
18 took on more as the Advisors. The goal and  
19 vision was that things would be wrapped up  
20 amicably.

21 Q. Okay. You know Frank Waterhouse.  
22 You've mentioned him quite a few times today,  
23 correct?

24 A. I do know Frank, yes, and I have  
25 mentioned him a quite a few times.

1 NORRIS

2 Q. You know that during the relative  
3 time period prior to the filing of the  
4 administrative claim, Frank Waterhouse was  
5 Highland's CFO, correct?

6 A. Prior to the filing of what, sorry?

7 Q. The administrative claim in January  
8 of 2020.

9 A. Yes.

10 Q. I apologize. Let me withdraw that.

11 You understand that Mr. Waterhouse  
12 was Highland's CFO from the petition date through  
13 at least the date that the Advisors filed their  
14 administrative claim in January 2021, correct?

15 A. I believe that's the case.

16 Q. Okay. Do you have any reason to  
17 believe that Mr. Waterhouse didn't have full  
18 access to Highland's accounting system?

19 A. We had access to Highland's  
20 accounting system.

21 Q. And he also had access to Highland's  
22 books and records, correct?

23 A. He did.

24 Q. And he also served as the Advisors'  
25 treasurer during the same period of time,

1 NORRIS

2 correct?

3 A. I believe that's the case, yes.

4 Q. And he was an officer of the -- of  
5 the Advisors during the same period of time,  
6 correct?

7 A. An officer of the Advisors, is that  
8 what you said?

9 Q. Yes.

10 A. That was -- you said treasurer, I  
11 believe, that's the --

12 Q. First I asked about treasurer and  
13 then I'm asking about his status as an officer.  
14 So let me just ask the questions again.

15 You are aware that from the petition  
16 date until the date the Advisors filed their  
17 administrative claim, that Mr. Waterhouse served  
18 as the treasurer of the Advisors, correct?

19 A. I believe that's the case, yeah.

20 Q. And during the same period of time he  
21 was an officer of the Advisors, correct?

22 A. Yeah, I believe the treasurer is an  
23 officer role.

24 Q. Okay. Was Mr. Waterhouse the person  
25 charged with the responsibility of authorizing

1 NORRIS

2 payments to be made on behalf of the Advisors?

3 A. Either Mr. Waterhouse or Mr. Klos.

4 Q. And you understand -- I'm sorry.

5 A. Go ahead.

6 Q. You understand that Mr. Klos reported  
7 at all times to Mr. Waterhouse, correct?

8 A. I believe that's the case. And if  
9 you tell me, then I'll believe that.

10 Q. Do you have any reason to believe  
11 that Mr. Klos ever did anything without the  
12 knowledge of Mr. Waterhouse, at least with  
13 respect to the payments that were made under the  
14 Shared Services Agreement and the Payroll  
15 Reimbursement Agreements?

16 A. I don't know. And, again, we haven't  
17 been able to depose both of them. But I know  
18 both of them knew of the overpayment. Both of  
19 them had raised the issue to DSI and to Highland  
20 and to counsel. And even the support that you  
21 provided us shows that they had an email in this  
22 calculation that was just a roll-forward of the  
23 analysis that had been done previously for DSI.

24 So they knew. They told us that they  
25 had -- couldn't do anything about it or were told

1 NORRIS

2 by Highland's counsel there was nothing they  
3 could do about it, and so they were in a tough  
4 position. Right? Frank and Dave were in a tough  
5 position, being stuck between both Advisors and  
6 having threats of their personal liability and  
7 firing, if they did anything to harm the economic  
8 interest of Highland.

9 So I see where you're coming from,  
10 but that's -- that's our view is they knew about  
11 it, they worked together, they raised the issue  
12 on multiple occasions, but we don't have all  
13 those details, other than what they told us in  
14 December of 2020.

15 Q. Did they raise the issue at any time  
16 before December 2020?

17 A. To me and -- and, again, it was  
18 around the end of November, beginning of 2020, I  
19 don't know if they raised the issue to me  
20 personally or to -- or they didn't to me or DC.  
21 We know they raised it -- you're saying to the  
22 Advisors or to Highland?

23 Q. To the Advisors.

24 A. Not that I'm aware of. Right? The  
25 first time we had heard about it was around that

1 NORRIS

2 timeframe, and we were shocked, including  
3 Mr. Dondero. Right? This is an important time  
4 period, and myself and DC when we found out.

5 Q. That's because -- that's because  
6 Highland had just -- all of this came to light  
7 after Highland gave notice of termination of the  
8 Shared Services Agreement on November 30th,  
9 correct?

10 A. I don't think so. I think that it  
11 had started earlier. And we actually sent, I  
12 think, a letter to your firm in October where we  
13 suspected we were overpaying, and we asked for  
14 the invoices.

15 And so DC and myself started to get  
16 involved in October, November, December because  
17 there were certain employees that couldn't be  
18 providing those services due to, you know, as we  
19 talked about earlier in the deposition, all of  
20 the things that were going on.

21 And so we started to understand a  
22 little bit more. We found out, we thought, on  
23 certain aspects of it, but it was that October,  
24 November, December timeframe.

25 Q. You mentioned that part of HCMFA's

1 NORRIS

2 damages are half the cost of Harris and Post; do  
3 I have that right?

4 A. That's correct.

5 Q. Okay. Over what period of time does  
6 HCMFA contend Highland should have to reimburse  
7 it for for their services?

8 A. Yeah, so the period of time is from  
9 the time period which Jason Post moved over until  
10 the termination of the agreement, not the  
11 termination notice, but the actual termination of  
12 the agreements, and then from the time period  
13 that Mr. Harris was hired, which was in October,  
14 until the end of the Shared Services Agreement.  
15 He was hired specifically to fill the void of  
16 the legal services that had been provided  
17 previously. And Mr. Post was moved over, yet we  
18 continued to pay for his services.

19 Q. Do you know what Mr. Post's salary  
20 is? Withdrawn.

21 Is that \$425,000 number based on  
22 anything other than their salary, their W-2  
23 salary?

24 A. It's salaries, bonuses and benefits  
25 received during that time period.

1 NORRIS

2 Q. And how much salary, bonus and  
3 benefits did Mr. Post receive during that time  
4 period?

5 A. I don't have the breakout. I got  
6 this -- I got the total numbers from -- from  
7 Brian Collins. So I just have the total number.

8 Q. Do you know if any documents have  
9 been produced in discovery that would support  
10 your contention as to the cost of those two  
11 employees?

12 MR. RUKAVINA: If you have knowledge,  
13 John. If you would like them, we'll produce them  
14 in confidence.

15 MR. MORRIS: I'm happy to take them  
16 in confidence. But, yes, I would like any  
17 document that the Advisors contend supports their  
18 damage theory.

19 MR. RUKAVINA: We'll get that to you  
20 ASAP. Just because it's personal, I just --

21 MR. MORRIS: No problem.

22 BY MR. MORRIS:

23 Q. Okay. Is there any difference in the  
24 analysis under the NexPoint shared services  
25 damage calculation than what we just talked about

1 NORRIS

2 for HCMFA, other than the fact that I guess the  
3 monthly number is a little bit less.

4 A. It's the same.

5 Q. It's otherwise the same theory, do I  
6 have that right?

7 A. Yes.

8 Q. Okay. So it's half the cost of  
9 Harris and Post's salary benefits and bonuses  
10 from the period they were hired until the  
11 termination date; is that right?

12 A. That's correct.

13 Q. And then you took the annual cost  
14 under the Shared Services Agreement -- actually,  
15 you know, I'm going to ask another question, go  
16 back to that \$800,000 question.

17 I understand that it's \$500,000 a  
18 month, but what portion of the annual payments  
19 under the Shared Services Agreement does the  
20 \$800,000 represent?

21 A. If you look at Dave's analysis, it  
22 was during the time period he looked at, current  
23 charges of 3.6 million, shared services costs,  
24 3 million, so the 600,000 for the year divided by  
25 3.6 is approximately 16.66 percent, I believe.

1 NORRIS

2 600 divided by --

3 Q. Okay. So, again, you're just relying  
4 on Mr. Klos's analysis at this time?

5 A. That's correct. It was prepared by  
6 the Debtor as an estimate of overpayments.

7 Q. Did you talk to Mr. Klos about that  
8 analysis?

9 A. So he told me it existed.

10 Mr. Waterhouse as well. But I asked for a copy  
11 of it, he said he would have to check and didn't  
12 believe that they would allow -- you, Highland,  
13 would allow him to provide it. And that was the  
14 case, you wouldn't allow him to provide it.

15 So we talked to him and Frank about  
16 the overpayments that occurred in the analysis,  
17 but we didn't actually get a copy of it until  
18 discovery.

19 Q. And Mr. -- after Mr. Waterhouse left  
20 Highland but before his lawyer, I guess,  
21 intervened and said you're not allowed to speak  
22 with him, did anybody from the Advisors ask him  
23 about that analysis?

24 A. After he left?

25 Q. Uh-huh.

1 NORRIS

2 A. I don't remember -- no, he left at  
3 the end of February, right?

4 Q. Right.

5 A. Yeah, I don't -- we had talked to  
6 him, I don't know the time period, but we had  
7 talked to him about this in that period of  
8 December/January/November, same time as Dave  
9 Klos. I don't know that there was discussion  
10 with him. There may have been, but I don't know.

11 Q. Did Dave or Frank tell you or anybody  
12 at the Advisors, prior to the filing of the  
13 administrative claim, what the overpayment number  
14 was?

15 A. Yeah, there was discussion. Dave  
16 wouldn't give specifics except that it was large,  
17 you know, close to -- I believe there were  
18 estimates. And I believe Frank had said  
19 something like \$14 million, which amounted to --  
20 which was a source of what we included in our  
21 admin claim. We included 14 million originally.

22 So it was all verbal. And so what we  
23 -- we were working off the best available  
24 information, and they -- they were in a tough  
25 spot, too. They couldn't provide the

1 NORRIS

2 information. They couldn't give us the detailed  
3 calculation. I think they gave us rough  
4 ballpark.

5 MR. MORRIS: La Asia, can you pull up  
6 Exhibit 26, please.

7 (Exhibit 26 marked for identification.)

8 MS. CANTY: Sure, give me one second.  
9 Let me see if I have it.

10 BY MR. MORRIS:

11 Q. So do you see you wrote an email on  
12 December 1st, 2020?

13 A. Yeah.

14 Q. And do you remember writing this  
15 email?

16 A. I do.

17 Q. And this is at 8:53 in the morning,  
18 after Highland has given notice the prior day of  
19 termination of the Shared Services Agreement.

20 Do you remember that?

21 A. I actually had not received the  
22 shared services termination at that time. And I  
23 don't know -- I do recall I didn't hear about it  
24 until later, and I wasn't copied on the original  
25 notice.

1 NORRIS

2 Q. It couldn't have been too much later  
3 because you refer to the termination notices in  
4 your December 1st email at 8:53 a.m., right?

5 A. Oh, I must have, yeah, you're right.

6 Q. What's --

7 A. When was the date of the termination  
8 notices?

9 Q. I'll represent to you that it was  
10 November 30th.

11 A. Perfect. Yeah. So evidently I don't  
12 remember as many details about writing this  
13 email. I have to look back at this.

14 Q. Okay. So before 9:00 o'clock on the  
15 morning after the termination notice is sent --  
16 how come -- how come you're doing this analysis  
17 that morning, do you remember?

18 A. Well, even prior to this, D.C. and I  
19 were trying to understand the separation -- the  
20 separation of all the agreements. At this time  
21 now Highland was moving towards a liquidation.  
22 We were now going to be responsible for our own  
23 services. And so I was trying to understand --  
24 this is when I first got a glimpse into these  
25 numbers, was trying to understand what we were

1 NORRIS

2 paying and for what. And you can clearly tell  
3 from this and his responses we didn't know  
4 exactly the amounts that were being paid for what  
5 specifically. And that's what we were trying to  
6 do.

7 Q. Okay. Do you see that your total is  
8 \$14 million?

9 A. I do, yeah.

10 Q. That's the number that you came up  
11 with, right?

12 A. No, this is actually taken directly  
13 from materials, the trailing 12 months ended  
14 6-30. This is the actual services. This isn't  
15 an overpayment calculation. This is an actual  
16 services provided. And I believe I stripped this  
17 from materials that Mr. Klos had provided to our  
18 board.

19 Q. Do you know what materials those are?

20 A. If it's related to income statement  
21 items, which I believe this is, he provides an  
22 annual as part of the 15(c) process expenditures  
23 that are paid. I think that may have been the  
24 source of it, but I'm not sure. These were items  
25 I stripped from materials that Mr. Klos had

1 NORRIS

2 already prepared or Mr. Waterhouse or their  
3 accounting team.

4 Q. And they are numbers that come off  
5 the income statement, correct, your  
6 understanding?

7 A. I believe so. Yeah. And you have an  
8 expense line item, right? That would be from the  
9 income statement.

10 Q. And would the -- would the Advisors'  
11 books and records reflect amounts paid to  
12 Highland under the Shared Services Agreement and  
13 Payroll Reimbursement Agreement?

14 A. Would the Advis- -- sorry, can you  
15 repeat that?

16 Q. Would the Advisors' books and records  
17 reflect all payments made to Highland under the  
18 Payroll Reimbursement Agreement and the Shared  
19 Services Agreements?

20 A. They should, right? You have just  
21 the cash -- cash going out and an expense line  
22 item, and what we've said all along here is we  
23 were relying on Highland to outsource the  
24 accounting and the books and records, including  
25 payments to them, and they were booking them as

1 NORRIS

2 they came through.

3 Q. Okay. So -- so would the payments --  
4 do you understand whether the payments made by  
5 the Advisors to Highland would be reflected in  
6 the general ledger of the Advisors as payable on  
7 the accounts -- withdrawn. Let me ask a better  
8 question.

9 Do you understand that all payments  
10 made by the Advisors to Highland would be  
11 reflected on the Advisors' respective accounts  
12 payable ledger?

13 A. If they were approved, a payable is a  
14 liability and would be a payable on accounts  
15 payable ledger. An actual accounts paid or  
16 expenditures or cash outflows ledger, I mean,  
17 we're talking about specifics, but they would  
18 have been reporting what they were charging us  
19 and what they were billing us, which we contend  
20 is an overbilling for services actually provided.  
21 We're not intending --

22 Q. Let me interrupt.

23 MR. MORRIS: I'm going to move to  
24 strike and ask you to listen carefully to my  
25 question.

1 NORRIS

2 BY MR. MORRIS:

3 Q. Do you know whether payments made by  
4 the Advisors are reflected in the Advisors'  
5 respective accounts payable ledger?

6 A. I don't know. I've never seen the  
7 accounts payable ledger. But Mr. Klos and  
8 Mr. Waterhouse would have maintained that and  
9 their team. So we would be able to find out.

10 Q. Do you know where in the Advisors'  
11 books and records payments made by them to  
12 Highland under the Shared Services Agreements and  
13 the Payroll Reimbursement Agreements would be  
14 reflected?

15 A. Do you want the debits and credits?  
16 I'm a CPA, but I haven't actually done accounting  
17 in a long time.

18 Q. I'm asking for your knowledge.

19 A. It's an income statement, right? I  
20 mean, you have an expense line item and, you  
21 know, and then you're also going to hit the  
22 balance sheet because you have cash flowing out.  
23 It's going to reduce the assets. Our assets were  
24 reduced. And our claim here is our assets were  
25 reduced far more than they should have been

1 NORRIS

2 because we were overpaying for services. And the  
3 expense line item would have been too high  
4 because we were paying for things that we  
5 shouldn't have.

6 Q. Do you know if the Advisors' income  
7 statements were distributed to its officers on  
8 any periodic basis, whether it's monthly or  
9 quarterly or semiannually?

10 A. I don't know.

11 Q. Did you in your capacity as the  
12 Executive Vice President of the Advisors ever  
13 review the Advisors' financial statements?

14 A. Not in the context of they sent them  
15 to me to review. Occasionally I would look at  
16 them on the 15(c) materials, which were usually  
17 published as of June 30th, because those meetings  
18 were in August and September. But that was more  
19 of a cursory review from, hey, I'm curious. It  
20 wasn't my responsibility to handle any of the  
21 accounting or the financials. I rarely even  
22 understood the financials from that perspective.

23 Q. Prior to the end of 2020, from the  
24 petition date until December 31st, 2020, do you  
25 know whether the Advisors had any monthly expense

1 NORRIS

2 greater than the expenses they were paying to  
3 Highland under the Shared Services Agreements and  
4 the Payroll Reimbursement Agreements?

5 A. Sorry, from what period?

6 Q. From the petition date until the end  
7 of December 2020.

8 A. I don't know. Again, I -- I don't  
9 know.

10 Q. Can you identify any service provider  
11 that the Advisors had during that period of time  
12 which either of the Advisors paid, you know, more  
13 than a hundred thousand dollars?

14 A. I wasn't involved in the financials.  
15 Again, we outsourced that. We relied on Highland  
16 and Frank and Dave and his team. So I'm not  
17 familiar with the actual financials and all the  
18 service providers involved, so I can't answer  
19 that.

20 Q. When you -- when you spoke with  
21 Mr. Dondero in preparation for your deposition  
22 today, did you ask him if he was aware of the  
23 amounts that the Advisors were paying to Highland  
24 under the Shared Services Agreement and the  
25 Payroll Reimbursement Agreements after the

1 NORRIS

2 petition date?

3 A. Of the specific dollar amounts?

4 Q. Just whether he was aware.

5 A. Yeah, we talked about -- I asked him  
6 if he was aware that we were paying for services  
7 we weren't receiving and that we were overpaying.  
8 And he said, no, up until the point when we  
9 discovered it, he did not know.

10 Q. Did you ask him if he knew of the  
11 services that weren't being provided?

12 A. We discussed more generally services  
13 that weren't being provided, particularly the  
14 employees that were no longer employed, some of  
15 the legal and compliance services, more  
16 generally. He didn't get into "do you know the  
17 specifics." But his understanding was there were  
18 services not being provided.

19 And he said -- this is what he said,  
20 he said, "Well, our understanding is we were in  
21 discussions and Mr. Seery had said that those  
22 items would be netted out."

23 We were working towards an amicable  
24 resolution and Mr. Seery had represented -- and  
25 this is coming from Mr. Dondero -- that those

1 NORRIS

2 items would be netted out.

3 And so there was discussions, I'm  
4 sure there was knowledge of certain overpayments,  
5 underpayments, but these items would have been  
6 resolved.

7 Q. Did you ask Mr. Dondero why the  
8 Advisors continued to pay full freight when they  
9 knew that they weren't getting full services?

10 A. We did not -- yeah, we discussed  
11 that. He did not know and I did not know and no  
12 one that we spoke to knew that we were paying,  
13 you call it full freight, I would say full  
14 freight plus some, because we weren't paying for  
15 the services received, we were paying for  
16 employees no longer there.

17 And that's the big part of it, the  
18 payroll reimbursement. We talked about the  
19 numbers related to Shared Services Agreement, but  
20 these payroll numbers which we provide in our  
21 analysis are pretty significant. And we -- and  
22 his view, too, is what were we paying Highland  
23 for if not to provide the actual accounting and  
24 payables and calculations correctly.

25 Q. Did he provide any explanation as to

1 NORRIS

2 why the Advisors have been unaware until October  
3 or November 2020 that they were overpaying?

4 A. Yeah. Yeah. Actually, he said to  
5 me, he said, "You don't have" -- "We don't have a  
6 separate accounting team." Right? "We don't  
7 have duplicate, we're not hiring someone else to  
8 come in and check, we're relying on Highland."

9 And up until that point we expected  
10 to be charged and billed the proper amount. So,  
11 yeah, we did discuss that and those are some of  
12 the things I've been representing today.

13 Q. Okay. Do you know if anybody on  
14 behalf of the Advisors had any conversation with  
15 Mr. Waterhouse between the moment that he left  
16 Highland and the moment that his lawyers said you  
17 can no longer speak to him about these issues of  
18 damages and amounts paid and due under these  
19 agreements?

20 A. I know there were discussions where  
21 he reiterated that a calculation was done and  
22 Dave Klos prepared it, but I don't know who or  
23 when. And I think even then he was reserved on  
24 what he could or couldn't provide, given the  
25 threats that had been provided to him that he

1 NORRIS

2 would be personally responsible for any economic  
3 damages.

4 Q. Okay. During your diligence in  
5 preparing for this deposition, did anybody tell  
6 you that Frank Waterhouse had provided any  
7 information about amounts paid or overpaid under  
8 these agreements between the time he left  
9 Highland and the time his lawyer said he could no  
10 longer speak with the Advisors?

11 A. No. And -- and he, from the  
12 beginning, you may remember there was limited  
13 amount we could access Mr. Waterhouse. And so  
14 all of our communication, I believe, is before  
15 the filing. And he didn't have access to his  
16 files. He left the firm. He didn't have emails.  
17 He didn't have the calculation from Mr. Klos.  
18 And so there's limited things that he could  
19 provide.

20 MR. MORRIS: I'm going to move to  
21 strike. And I'm going to ask you to listen  
22 carefully to my question.

23 BY MR. MORRIS:

24 Q. During your diligence did anybody  
25 tell you that Mr. Waterhouse said anything

1 NORRIS

2 between the period between leaving Highland and  
3 the time his lawyer said he could no longer speak  
4 with the Advisors concerning amounts paid or  
5 overpaid under the four agreements?

6 A. No, not in my -- my diligence in  
7 preparing.

8 Q. Thank you very much.

9 MR. RUKAVINA: John, when you find a  
10 convenient time, I request a restroom break.

11 MR. MORRIS: I'll do it right now for  
12 you, Mr. Davor.

13 (A break was taken from 3:29 p.m. to  
14 3:41 p.m.)

15 BY MR. MORRIS:

16 Q. Mr. Norris, we're going to put up on  
17 the screen the document that you were kind enough  
18 to identify and I just want to ask you a few  
19 questions about it. Is this the document you  
20 were referring to?

21 A. Which one am I referring to?

22 Q. The analysis that was prepared by  
23 Mr. Klos.

24 A. No, this is -- this is the analysis  
25 that I prepared regarding --

1 NORRIS

2 Q. Oh, you're right. You know what, I  
3 don't have that other one.

4 MR. MORRIS: Can we take this down  
5 for the moment?

6 MS. CANTY: Do you want the other  
7 one?

8 MS. WINOGRAD: I wanted the one with  
9 that Bates number HCL-025012.

10 MS. CANTY: Okay. Give me one minute  
11 to get it up.

12 MR. MORRIS: Okay.

13 (Discussion off the record.)

14 (Exhibit 56 marked for identification.)

15 BY MR. MORRIS:

16 Q. Okay. So is -- let's just -- let me  
17 say for the record that we're -- we've put up on  
18 the screen a document bearing Bates number  
19 ACL-025012. Do you see that, sir?

20 A. I do, yes.

21 Q. And is it your understanding that  
22 Dave Klos prepared this document?

23 A. My understanding based on the email  
24 that went from Dave to Mr. Waterhouse. But,  
25 again, I'm making assumptions that the file was

1 NORRIS

2 sent from Dave to Frank. And my understanding is  
3 Frank -- or Dave created this.

4 Q. Okay. Has -- your understanding is  
5 who prepared this?

6 A. Dave. However, that's just based  
7 on -- the discussions we had in December 2020,  
8 where he said he had prepared analysis. I don't  
9 know if this is it. I'm assuming this is it. It  
10 matches the description. So we'll have to figure  
11 out when Dave is deposed if he did in fact create  
12 this.

13 Q. Did anybody other than Mr. Waterhouse  
14 acting on behalf of the Advisors ever speak with  
15 Mr. Klos about this document?

16 A. Myself and DC Sauter. Not the  
17 individual line items, but Dave told us he had --  
18 there had been an analysis done that showed  
19 significant overpayment.

20 Q. Okay. Tell me everything that  
21 Mr. Klos told you and Mr. Sauter about this  
22 document that you can recall.

23 A. Yeah, it was -- we were going through  
24 the numbers and it was very high level of there  
25 was an analysis done, he was very guarded because

1 NORRIS

2 he was afraid of what he could or could not tell  
3 us. And he told us there was an analysis done  
4 that showed the overpayments. And so we asked  
5 for that and it wasn't provided.

6 Q. Did he say anything else in this  
7 conversation?

8 A. The conversation was related to  
9 transition services. We were going through a  
10 host of other things on how can we transition  
11 agreements and a number of things. That was --  
12 in regard to the overpayment, it was very  
13 general.

14 Q. Was this a telephone conversation or  
15 was it in person?

16 A. Pretty sure it was a telephone  
17 conversation, but -- pretty sure it was  
18 telephone.

19 Q. Do you remember when it took place?

20 A. It was early December. Early  
21 December.

22 Q. Did he tell you why he had prepared  
23 the analysis? Withdrawn.

24 Did he tell you that he personally  
25 prepared the analysis?

1 NORRIS

2 A. I don't remember. I don't remember  
3 him saying him personally, but -- my recollection  
4 isn't perfect on that. I don't recall.

5 Q. Do you recall if he told you who did  
6 prepare the analysis?

7 A. No.

8 And then I would note in discovery we  
9 see, though, that it is a roll-forward -- this is  
10 a roll-forward of the information prepared for  
11 DSI and SCI last fall, which I would assume is  
12 fall 2019. So there was obviously a calculation  
13 in '19 prepared for DSI and SCI, but we don't  
14 have an indication of who prepared that, but we  
15 will be able to ask Mr. Klos.

16 Q. Did Highland at any time ever ask the  
17 Advisors to extend the Shared Services Agreement  
18 for any purpose other than completing an orderly  
19 transition?

20 A. Did Highland ask to extend it? I'm  
21 not aware of the discussions that went on. They  
22 may have, but -- I don't know if that was  
23 something on the preparation. It's not something  
24 I prepared for in discussing the negotiation of  
25 termination of shared services.

1 NORRIS

2 Q. You were involved in the process of  
3 negotiating the transition of services, correct?

4 A. Correct.

5 Q. And during the conversations -- and  
6 that process began in the summer of 2020, right?

7 A. Summer of 2020?

8 Q. July, August, September.

9 A. The second half of 2020, yes. My  
10 involvement really started much later. And I  
11 would say up until later 2020, the plan was that  
12 a plan would actually work, that there would be a  
13 negotiated agreement. And then once we realized  
14 that really wasn't happening, we had to prepare  
15 for Plan B and then Plan C and Plan D. But that  
16 was late 2020, and my involvement started end of  
17 November, beginning of December, and really in  
18 earnest about mid-January.

19 Q. I'm going to ask you this question in  
20 your personal capacity.

21 In your personal capacity are you  
22 aware of any proposal by Highland to extend  
23 either of the Shared Services Agreements?

24 A. A proposal to extend them?

25 Q. Uh-huh.

1 NORRIS

2 A. Any proposal to extend them?

3 Q. Correct, other than for the purpose  
4 of completing the orderly transition, because  
5 there were a couple of extensions in January and  
6 February. I'm not talking about that.

7 A. Yeah. My understand of the  
8 extensions was to complete the transition. But  
9 there was a lot going on, and if you're asking in  
10 my personal, I don't have any other recollection  
11 or knowledge personally on that.

12 And, again, I wasn't involved in the  
13 shared services negotiation prior to -- really  
14 prior to receiving the notices. And then even  
15 directly thereafter it was just helping  
16 transition items in negotiations of the actual  
17 transition.

18 Q. Do you know why this document was  
19 prepared?

20 A. I don't.

21 Q. So Mr. Klos did not tell you during  
22 your conversation why this document was prepared,  
23 correct?

24 A. No. If I look at the emails that  
25 Klos attached it, it obviously wasn't the first

1 NORRIS

2 time, it was a roll-forward. So why was it first  
3 prepared in 2018 -- or, I'm sorry, 2019 with DSI  
4 and SCI, I have no idea other. And we'll find  
5 that out with Mr. Klos.

6 Q. But Mr. Klos -- your recollection is  
7 that Mr. Klos specifically told you that an  
8 analysis was done that showed overpayments; do I  
9 have that right?

10 A. Yes. It was the amount that had been  
11 profit were overpayments to Highland.

12 Q. Did he say "profits" or  
13 "overpayments," if you remember?

14 A. I don't remember.

15 Q. It could have been either one of  
16 those?

17 A. Well, profits would have resulted  
18 from the overpayment. So it could have been  
19 either of them. But, yeah, I don't remember  
20 from --

21 Q. Okay.

22 A. -- the individual discussions.

23 Q. Just a little patience with me,  
24 please. I'm asking you to put yourself back in  
25 time and to try to remember the conversation that

1 NORRIS

2 you had with Mr. Klos. What did he say?

3 A. We definitely talked about  
4 overpayments, that we were paying for employees  
5 that were not there. So that was part of it.

6 And whether that created a profit.

7 He did say even by email -- there is  
8 communication by email that there was a profit.  
9 So I think it was both.

10 In the conversation we were talking  
11 about paying more than we owed. And in the  
12 email, it was written profit, right? He noted  
13 that there was a significant profit to Highland  
14 from those contracts. Which, again, is against  
15 the intent of the agreement, which was a  
16 reimbursement for actual costs.

17 MR. MORRIS: I'm going to move to  
18 strike the last portion of your answer and again  
19 just ask you respectfully to listen to my  
20 question. I'm just asking you about the  
21 conversation you had with Mr. Klos. I don't need  
22 commentary. I don't want the commentary.

23 BY MR. MORRIS:

24 Q. Other than the one conversation --  
25 withdrawn.

1 NORRIS

2 Do you recall anything else about  
3 this particular conversation that you and  
4 Mr. Sauter had concerning this document?

5 A. No.

6 Q. Do you know whether anybody acting on  
7 behalf of the Advisors ever had any other  
8 communication with Mr. Klos concerning this  
9 document?

10 A. I know that DC continued to ask for  
11 it. I continued to ask for it. I asked for it  
12 in January from Mr. Klos. I asked for it from  
13 DSI, DC and myself and Fred Caruso, and in  
14 February maybe had a call with Pachulski on that  
15 we talked to Brad Sharp.

16 And at this point I'm not even  
17 certain what the analysis would include. But we  
18 knew it existed and I continued to request it.  
19 We requested it in a December 11th letter to your  
20 firm from our counsel. And it -- so it was -- it  
21 was requested many times, but there was not a lot  
22 of information given.

23 Q. Okay. Can you share with me your  
24 interpretation of this document? What do you  
25 think this document reflects?

1 NORRIS

2 A. Yeah. So as we read through this,  
3 you have at the top the actual allocations and  
4 shared services and investment support, which is  
5 payroll reimbursement, right? What is the front  
6 office support that's being provided --

7 Q. I apologize. I'm going to interrupt.  
8 Can you just be a little bit more specific like  
9 where on the document you're looking at?

10 A. Yeah, so at the top section, the  
11 summing number that sums the 3.3 million and  
12 3.7 million.

13 Q. Yes. Thank you.

14 A. Yeah, so NPA allocation and HCMFA  
15 allocation. You've got an allocation of  
16 investment support and shared services. Just as  
17 the agreement state, they will allocate and  
18 charge us for actual cost, a cost at margin.  
19 This is what they're showing here. He breaks it  
20 out by line item. So legal and compliance, what  
21 is the actual allocation of cost .2 and .3,  
22 that's 200,000, 300,000.

23 So you take those same numbers down  
24 to the bottom and you say, okay, now -- he did  
25 basically a subtotal of front office, which is

1 NORRIS

2 also above incorporated in investment support.  
3 And so the investment support group charge is  
4 \$3 million. You can go and add up all the line  
5 items for investment support and it equals three  
6 dollars, or \$3 million for NPA allocation and  
7 \$5 million for HCMFA allocation. So if you  
8 recall we're paying for actual costs of these  
9 services.

10 The investment support, this is the  
11 charge, the 3 million and 5 million. We were  
12 being charged 8 million a year and Highland was  
13 receiving cash and utilizing that to pay their  
14 operating expenses.

15 The investment support is what was  
16 actually provided. And that adds up to a  
17 profitable number, profitability, or overpayment  
18 of 2.3 million for NexPoint and \$4.3 million for  
19 HCMFA for a total of 6.6. You carry that down to  
20 the next row. Unadjusted gain is \$6.6 million.

21 And --

22 Q. Hold on one second. So that 6.6 is  
23 the 2.3 plus the 4.3?

24 A. 2.3 plus the 4.3, yeah.

25 Q. I'm going to stop you just for a

1 NORRIS

2 second and make sure I understand.

3 So above the line you have the annual  
4 payments due under the NPA -- this is -- this is  
5 the Payroll Reimbursement Agreement, right?

6 A. Correct.

7 Q. This has nothing to do with shared  
8 services, right?

9 A. It does --

10 Q. At the bottom.

11 A. Once again, on front office payroll  
12 reimbursement. Right?

13 Q. Okay. So the NPA Allocation column  
14 is Highland's attempt to allocation among the  
15 various services the payments that are due on an  
16 annual basis under the NexPoint Payroll  
17 Reimbursement Agreement, right? That's how you  
18 get to \$3.3 million?

19 A. 3.3 and 3.7 are the actual charges.

20 So these were -- I'm assuming these are just  
21 stagnant numbers or -- the stagnant numbers --  
22 no, no, sorry. You're right. The 3.3 and 3.7  
23 are the actual allocations of those actual costs.

24 Q. Okay. Do you know why the current  
25 charges of \$3 million and \$5 million are

1 NORRIS

2 different?

3 A. Yes. Because there was a -- if you  
4 go back to the Payroll Reimbursement Agreement,  
5 the dollar amounts are based on the employee  
6 services from Appendix A. Those current charges,  
7 \$3 million, tie directly to the original amounts  
8 that were being charged, which was \$252,000 for  
9 NexPoint Advisors and \$416,000 for HCMFA as a  
10 reimbursement for employees that were providing,  
11 one, investment advisory services, and, two, were  
12 dual employees.

13 So those are different because the  
14 amount of services provided to each entity varied  
15 when the contract was created and they continued  
16 to roll forward the same exact billing and so you  
17 see a three and a five. That's why they differ.

18 Q. Okay. So is it your understanding  
19 that the difference between the current charge  
20 and the profitability is the value of the  
21 services actually provided? That's \$700,000 for  
22 each -- that's shown as investment support.  
23 That's the value of investment support that was  
24 provided and so that's reduced from the current  
25 charges to get the net profitability?

1 NORRIS

2 A. Yeah. And just as an independent  
3 analysis, you can look at the numbers that we  
4 used from Kristin using the actual payroll of the  
5 employees that were employed during that time  
6 period and it lines up pretty close.

7 Q. Okay. Okay.

8 Let's go to shared services and I may  
9 come back to this. Can we scroll up a little bit  
10 to make sure there's nothing below the line here?

11 So, shared services. Do you know  
12 what "Current Charges" represent?

13 A. The current charges are the amounts  
14 that are being invoiced. And my understanding is  
15 that's at a constant rate and wasn't adjusted for  
16 actual services provided, which is the next line  
17 down, shared services.

18 Q. And do you have any idea how those  
19 numbers are derived, the 2.6 million and the  
20 3 million?

21 A. We would have to ask Mr. Klos, or  
22 maybe you're, you know, additional support you  
23 provide us will have that, but I'm making the  
24 broad assumption here that it is for actual  
25 services provided. And we would love to see the

1 NORRIS

2 support just to --

3 Q. Yeah, I do apologize, Mr. Norris.

4 It's my fault. Mr. Rukavina has asked me for it  
5 a couple of times. I've responded to a number of  
6 requests and that's just one that fell through  
7 the cracks and I take responsibility for that.

8 Okay?

9 A. Yeah, no problem. I won't bring it  
10 up again.

11 Q. I don't mind you bringing it up, but  
12 I think you deserve an explanation.

13 And so then you get a net  
14 profitability, that 400,000 and that 600,000, and  
15 those are the numbers you extrapolated over the  
16 entire postpetition period; do I have that right?

17 A. Yes. The million is just taken from  
18 Klos's numbers.

19 Q. Yeah. Okay.

20 Do you know what's to the right  
21 outside the box, the supplemental column?

22 A. I don't.

23 Q. Do you have an understanding of what  
24 that is?

25 A. No, I don't. But I'm assuming -- I

1 NORRIS

2 can only make assumptions. Klos will know.

3 Q. Perhaps. I would assume that either  
4 he or Waterhouse would.

5 And do you know what the last column  
6 is: Total allocated costs less all entities?

7 A. It's the summation of the three  
8 columns before, I believe: 7.5 plus 3.7 plus  
9 3.3, I believe. Add those up, six, seven, plus  
10 7.5. That adds up. So...

11 Q. Is it fair to say that the Advisors'  
12 entire damage claim is the \$9.6 million at the  
13 bottom of this page plus the \$425,000 for the two  
14 employees that they were required to hire?

15 A. No. There's -- there's -- let's  
16 point out the 9.6, there are two numbers in here  
17 which aren't part of these agreements. One is an  
18 offset that they have in there for Non-Debtor  
19 Employees providing services to the Debtor. We  
20 want to learn more about that. We aren't  
21 including that number.

22 Our damage number is very simple.  
23 One, you could take -- you have the shared  
24 services number were taken directly from here,  
25 and the payroll reimbursement would be a range

1 NORRIS

2 between our calculation and this, which actually  
3 are approximately the same, \$6.6 million. If you  
4 annualize -- that's an annual number. If you  
5 take it for the 16 months and use the proration  
6 for 16 months, it's \$8.8 million.

7 So 8.8 plus 1.3 million -- right --  
8 gets you to -- nine point -- sorry. 8.8 plus  
9 1.3 -- I'm -- 8.8 plus 1.3 gets you 10.1, plus  
10 the 425,000, that's approximately 10 and a half  
11 million between HCMFA and NPA.

12 If you go the -- using our  
13 calculation that I provided to you, our estimate  
14 of the payroll reimbursement amounts are not 6.6  
15 times 16 months divided by 12 multiplied by 16 at  
16 8.8, it's 7.6. And, you know, we can talk about  
17 why there may be a difference, but we need the  
18 backup. But 7.6 million plus the 1.3 plus the  
19 425 gets you to approximately nine and a half  
20 million dollars.

21 So whether you use the payroll  
22 amounts from Dave Klos that gets you to  
23 approximately ten and a half million, you use our  
24 calculation without knowing full details, it  
25 could be even more when we understand the

1 NORRIS

2 difference, nine and a half to ten and a half  
3 million dollars.

4 Q. I just want to make sure there is no  
5 dispute about this. The Advisors didn't pay any  
6 amounts under any of the four agreements in  
7 December or January in December 2020, correct?

8 A. That's my understanding, that there  
9 was no payment in December or January.

10 Q. Okay. And payment was made in  
11 February because that was part of the negotiation  
12 for the extension of the termination notice,  
13 correct?

14 A. It was payment. We don't -- we don't  
15 admit or say that it was payment for shared  
16 services that were provided. We reserved all  
17 rights related to that.

18 And so, yeah, there was a payment  
19 made and we were really forced into it. There  
20 was no negotiation on moving that amount. It was  
21 take it or leave it, we're cutting you off or you  
22 pay it. So akin to extortion.

23 Q. Well, I mean, you're allowed to  
24 negotiate and decide what terms you're willing to  
25 accept; isn't that right? Do you have any

1 NORRIS

2 problem with that from a philosophical  
3 perspective?

4 A. Yeah, the options were to cut the  
5 services when we weren't expecting them to be cut  
6 and could have had had detrimental impact. You  
7 know, we could have handled it, but we did choose  
8 to pay the amounts that were requested, but we  
9 reserved all rights and continue to reserve those  
10 rights.

11 Q. Did the Advisors contend that  
12 Highland didn't give sufficient notice as  
13 required under the various agreements?

14 A. There was notice given. And then we  
15 were working towards a negotiated agreement with  
16 a peaceful transition and we were waiting on a  
17 term sheet -- I don't want to rehash it all, but  
18 I think there was a good faith effort. And then  
19 all of the sudden it was, "Pay it or we're  
20 cutting," right?

21 We all thought we were moving towards  
22 a peaceful resolution and we would get things  
23 done. And then things changed and there was a  
24 demand for payment or we're cutting you off. And  
25 so, yeah, there was -- under the agreements you

1 NORRIS

2 provided the notice, but things, as they  
3 progressed near the end of that changed.

4 Q. And you actually got to a complete  
5 agreement that was acceptable to everybody, every  
6 single term, except the Debtor refused to let  
7 Mr. Dondero back in the offices. That was the  
8 only issue that stood between the parties,  
9 correct?

10 A. If I recall correctly, yes. We  
11 negotiated hundreds of points. We all worked  
12 really hard. And the Debtor would not allow  
13 Mr. Dondero to be in the office that we would be  
14 leasing and perform his duties as the president  
15 of the company. So that was -- that was the  
16 sticking point for both sides. The Debtor didn't  
17 allow it and Mr. Dondero required it and there  
18 was no agreement.

19 Q. Let's -- let's see if we can finish  
20 up.

21 MR. MORRIS: Can we put that other  
22 document back up on the screen, please? La Asia,  
23 I think it was Exhibit 51.

24 (Discussion off the record.)

25 (Exhibit 51 marked for identification.)

1 NORRIS

2 BY MR. MORRIS:

3 Q. Mr. Norris, is this the Advisors'  
4 damage calculation relating to the alleged  
5 overpayments under the Payroll Reimbursement  
6 Agreements?

7 A. Based on the best information we have  
8 at this time, yes.

9 Q. Okay. Did the Advisors ever seek  
10 leave to file a prepetition claim arising from  
11 any overpayments under the Payroll Reimbursement  
12 Agreements?

13 A. I don't remember the specifics --  
14 sorry, can you repeat the question? There are  
15 legal terms that I want to make sure I get right.

16 Q. Sure. I don't mean to trick you at  
17 all.

18 Do you understand that the damages  
19 reflected on this page are called administrative  
20 expenses because they allegedly arose after the  
21 petition date?

22 A. Yeah. This is a postpetition claim  
23 and we're only talking about postpetition  
24 damages.

25 Q. Okay. Did the Advisors ever file a

1 NORRIS

2 prepetition claim?

3 A. I believe there were claims filed  
4 more as placeholders, but not specifically  
5 related to overpayments.

6 Q. Okay. So is it fair to say that to  
7 the best of your knowledge the Advisors never  
8 sought damages on account of prepetition claims  
9 arising under the Shared Services or Payroll  
10 Reimbursement Agreements?

11 A. Yeah, I think in one of our answers  
12 that you asked do we have a prepetition claim, I  
13 think the answer was -- it was under  
14 interrogatories or responses, however we said it  
15 there, and I would refer you there, but it was  
16 something to the extent of, "We don't deny" --  
17 "We don't say we didn't have damages," it was,  
18 "There was never a claim admitted by the Court  
19 related to that."

20 Q. Okay. Let me see if I can try and  
21 characterize this document in a way that you  
22 think is fair.

23 A. Uh-huh.

24 Q. The starting point for the Advisors  
25 was to determine how much was paid under the

1 NORRIS

2 Payroll Reimbursement Agreements from the  
3 petition date until the end of December 2020; is  
4 that right?

5 A. Now, what we did is from the petition  
6 date through February 19th, 2021. And I broke it  
7 into three groups here until 11-30, because  
8 that's largely the period where we had been  
9 making payments or overpayments, the period of  
10 the two months of December and January and then  
11 the 19-day extension.

12 Q. Okay. So the first column is a  
13 subtotal of the second two columns; do I have  
14 that right?

15 A. Correct.

16 Q. And there's three pieces to it based  
17 on three different periods of time?

18 A. Yes.

19 Q. And the first period of time, the  
20 first line, the \$9 million number, that  
21 represents the total amount paid from the  
22 petition date until November 30th, 2020, correct?

23 A. The amount invoiced and paid by  
24 Highland's employees on behalf of us.

25 Q. Okay. And then the \$1.336 million

1 NORRIS

2 number is the amount that was paid for the  
3 two-month period December 1st, 2020, to  
4 January 31st, 2021, correct?

5 A. It would have been the amount billed  
6 or invoiced based on the previous amount. So  
7 it's not the amount paid, it's the amount billed  
8 based on the original employee.

9 Q. Did NPA or HCMFA pay any portion of  
10 the \$1.336 million?

11 A. I don't believe there were any  
12 payments in December and January. And that's...

13 Q. So that that \$1.336 million number is  
14 different than the \$9 million number above  
15 because it only represents what was invoiced as  
16 opposed to what was paid, correct?

17 A. Yes.

18 Q. Okay. And is the same true for the  
19 \$453,000 number near the bottom in the third  
20 period, is that moneys that were actually paid or  
21 is that moneys that were only invoiced?

22 A. Those were actually paid. That's the  
23 amount paid for the extension -- along with the  
24 extension period.

25 Q. Okay. And then from the amounts

1 NORRIS

2 invoiced and/or actually paid you deduct the  
3 estimated actual cost with the appropriate  
4 employees; do I have that right?

5 A. Yeah. I'm deducting the actual  
6 employees because that's what should have been  
7 billed. We should have reimbursed for actual  
8 cost of employees that were, one, providing  
9 investment advisory services and, two, that were  
10 dual employees. So these are the list, and  
11 you'll see the backup on the sheet that shows  
12 each individual employee. But that's the amount  
13 of their -- our estimate of their comp which  
14 comes just directly from Ms. Hendrix' file that  
15 you allowed us to use.

16 Q. Okay. So I'm looking at the total,  
17 the \$7.649 million. Do you see that?

18 A. I do.

19 Q. And am I correct that that represents  
20 the difference between the amounts invoiced and  
21 what the Advisors contend should have been  
22 invoiced based on the estimated actual cost for  
23 the appropriate employees?

24 A. Yeah, that 7.6 million represents --  
25 I'm sorry, the difference -- the second line is

1 NORRIS

2 what you're saying, the second row of each is the  
3 amount that we should have been invoiced.

4 Q. Right. But the \$7.6 million at the  
5 bottom -- right -- is total overbilling for  
6 payroll reimbursement --

7 A. Yeah.

8 Q. -- from the bankruptcy filing until  
9 February 19th, 2021, is \$7.649 million  
10 approximately, correct?

11 A. That's right.

12 Q. And that number is derived by  
13 subtracting from the totaled invoiced amount for  
14 that period the estimated actual costs with  
15 appropriate employees, that second line in each  
16 period, correct?

17 A. Correct.

18 Q. Okay. But --

19 A. It's simple math.

20 Q. Right. That's all this is, is  
21 arithmetic, right?

22 A. It is. It's here are the employees  
23 using the data provided by Highland and adding up  
24 what was paid, which is this stagnant amount, and  
25 it's just -- so I'm not coming in here and we're

1 NORRIS

2 not -- this is not an expert analysis, it's  
3 literally just arithmetic.

4 Q. Okay. And I appreciate that. That's  
5 what I saw.

6 But that \$7.649 million is overstated  
7 by the \$1.336 million in the middle piece because  
8 that amount wasn't ever actually paid, right?

9 A. It wouldn't be overstated by the  
10 1.33, it would be potentially the 264, which  
11 would have been -- that we hadn't paid. Right?  
12 So you're looking at the difference.

13 But your point is valid in that we  
14 aren't denying that there was something incurred  
15 in December and January, but we didn't pay  
16 because we believed we had been far exceeding the  
17 payments that were. And so -- yeah.

18 Q. Your damage calculation should be the  
19 difference between what you paid and what you  
20 think you should have paid; is that fair?

21 A. My understanding is you're demanding  
22 or still demanding those other payments and so  
23 that's part of the calculation.

24 Q. Okay. That's fair. But from your  
25 perspective, because you don't think that

1 NORRIS

2 Highland is entitled to those payments, correct?

3 A. Not the amounts that are at the  
4 constant rate based on 2018 employee count.

5 Q. Okay. So if I took \$6.2 million from  
6 the first period and I added \$372,000, which is  
7 the net of the third period, and I added --  
8 withdrawn. That's okay. You know what...

9 When was this prepared?

10 A. I believe it was last week.

11 THE WITNESS: Davor, I don't know if  
12 you have any other --

13 A. I believe it was last week.  
14 Finalized last week.

15 MR. RUKAVINA: I can get you the  
16 date, Mr. Morris, that he prepared it.

17 BY MR. MORRIS:

18 Q. Did you personally prepare it?

19 A. I did.

20 Q. And did you personally prepare it for  
21 this litigation?

22 A. I did.

23 Q. Okay. What information did you rely  
24 on to prepare this report?

25 A. I relied on the information that was

1 NORRIS

2 provided by -- in the file that Davor provided  
3 you that has the payroll file that Ms. Hendrix'  
4 prepared, and I confirmed that that is an export  
5 from their payroll system. So that's the data.

6 There is one point I discussed with  
7 Mr. Collins, Brian Collins, regarding employee  
8 benefits. That's detailed in this support. So  
9 it's really the actual documents that came from  
10 the payroll system.

11 Q. And is everything behind this  
12 document, can it fairly be characterized as  
13 either the backup or the buildup to these  
14 numbers?

15 A. Yeah. And we provided that. You  
16 have it in other documents too.

17 Q. I think if we just scroll down to the  
18 next page, for example, you've got the buildup  
19 for each of the Advisors, right? You've got  
20 this -- this the buildup for NPA on the Payroll  
21 Reimbursement Agreement, correct?

22 A. Yeah, I guess if that's the word,  
23 "buildup." This is just the actual data and now  
24 it adds up to the front page. The front page is  
25 just literally summing the individual months and

1 NORRIS

2 the period.

3 Q. Okay. That's what I mean by  
4 "buildup." That number in the lower right-hand  
5 corner, would we find that on the first page?

6 A. No. If you go to the next page I can  
7 tell you how you get to the numbers on the first  
8 page.

9 Q. Okay. Let's do that.

10 A. So the numbers at the top are --  
11 sorry, the top orange numbers, this is HCMFA's.  
12 If you add up just the periods I have, this is  
13 the total monthly actual cost of these employees.  
14 You add up those months, just literally sum those  
15 up and they go to that time period on the front.

16 The next page is NexPoint Advisors.  
17 And if you go to the actual payments paid, that's  
18 the next to second orange row, 208,000, 416, 416.  
19 Oh, now on next page. Same thing here where it  
20 starts with 50,000, 100,000, 100,000 and goes  
21 down. That is the actual employees. And that is  
22 just calculated as arithmetic of what was their  
23 total compensation times the percentage  
24 allocation on Appendix B.

25 Q. Okay. Does this take into account

1 NORRIS

2 services that Highland provided -- withdrawn.

3 I think in your answers earlier you  
4 acknowledge that some of the services provided by  
5 departing employees were subsequently provided by  
6 other Highland employees; is that generally fair?

7 A. I would say to a limited extent. We  
8 don't believe that there was -- yeah, say here  
9 provided by other Highland employees, yes, to a  
10 limited extent, or by Advisors employees. There  
11 is a number of things that departing individuals  
12 that we took on in-house.

13 Q. Okay. But this analysis doesn't take  
14 into account the value of any services that may  
15 have been picked up by Highland employees  
16 following the departure of the dual employees  
17 that are subject to the Payroll Reimbursement  
18 Agreements, correct?

19 A. Well, when you look at this, I think  
20 it does, because most of those employees were  
21 working -- were already listed here as front  
22 office employees. To my understanding, there  
23 were no front office employees hired from the  
24 petition date through the end of the Shared  
25 Services Agreement. We weren't hiring front

1 NORRIS

2 office employees that then were providing  
3 services. So it's allocated these are the front  
4 office employees.

5 So, you know, John Poglitsch picked  
6 up and ran with Trey Parker's or, you know, other  
7 people pitched in and started doing things when  
8 someone had left.

9 Q. That happened or didn't happen?

10 A. It did happen. They would  
11 allocate -- you know, simple example: John  
12 Poglitsch who was the head of credit research  
13 under Trey Parker, CIO. When Trey left there was  
14 stuff that John did.

15 In addition, I mentioned earlier Joe  
16 Sowin, who was the portfolio manager, was added  
17 to the funds. He was an Advisor employee not an  
18 HCMLP employee. But most everything was filled  
19 with the existing front office employees.

20 Q. The front office employees of  
21 Highland, right?

22 A. Highlands and the Advisors.

23 Q. Okay.

24 A. There were a number of things that we  
25 had to begin doing on our own.

1 NORRIS

2 Q. Okay. But this analysis, I don't  
3 mean to wrestle with you, I think it's fairly  
4 simple based on what we're looking at here, this  
5 analysis doesn't take into account the services  
6 that were picked up by other Highland employees,  
7 does it?

8 A. Well, if those employees are listed  
9 on this list, it does, but if they're not, then  
10 that's where we say, "Hey, if there's someone  
11 else you said really started doing a true job  
12 that meets the degree of the agreement, we'd love  
13 to hear it. Right? We'd love to have good faith  
14 negotiation on what that looks like.

15 Q. Okay. And even for a guy like -- I'm  
16 going to mispronounce it -- Poglitsch, if he was  
17 allocated 29 percent under the agreement but now  
18 he's taking on some of Parker's role so that he's  
19 at 40 percent, this analysis wouldn't capture  
20 that, right?

21 A. We're using the percentages that were  
22 provided in the agreement. And, you know, maybe  
23 that's the difference between ours and Dave  
24 Klos's, he was adjusting the percentages, but --  
25 but it does not have a change analysis.

1 NORRIS

2 MR. MORRIS: Okay. Let's take just a  
3 short break. I may be done.

4 The time now is 5:24, let's come back  
5 really in six minutes at 5:30.

6 (A break was taken from 4:24 p.m. to  
7 4:31 p.m.)

8 MR. MORRIS: Mr. Norris, on behalf of  
9 Ms. Winograd and myself, thank you for your time.  
10 We have no further questions. And I do intend to  
11 get you that backup document no later than  
12 Monday.

13 THE WITNESS: Thank you.

14 (TIME NOTED: 4:31 p.m.)

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## 1 CERTIFICATE

2 STATE OF TEXAS )  
3 )  
4 COUNTY OF HARRIS )5 I, LINDA RUSSELL, a Certified Court  
6 Reporter within and for the State of Texas, do  
7 hereby certify:8 That DUSTIN NORRIS, the witness whose  
9 deposition is hereinbefore set forth, was duly  
10 sworn by me and that such deposition is a true  
11 record of the testimony given by such witness.12 I certify that review of the transcript by  
13 the deponent was requested.14 I further certify that I am not related to  
15 any of the parties to this action by blood or  
16 marriage; and that I am in no way interested in  
17 the outcome of this matter.18 IN WITNESS WHEREOF, I have hereunto set my  
19 hand this 4th day of March, 2022.20   
21 LINDA RUSSELL, Texas CSR #2965  
22 Expiration Date: 4/30/202323 TSG Reporting, Inc.  
24 Firm Registration No. 615  
25 228 E. 45th Street, Suite 810  
New York, New York 10017  
(212) 702-9580

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## 1       ERRATA SHEET FOR THE TRANSCRIPT OF:

2       CASE NAME: In re: Highland Capital Management, LP

3       DEP. DATE: March 4, 2022

4       DEPONENT: DUSTIN NORRIS

## 5                   CORRECTIONS:

6       Pg.   Ln.   Now Reads                   Should Read                   Reason

7       \_\_\_\_   \_\_\_\_   \_\_\_\_\_                   \_\_\_\_\_                   \_\_\_\_\_

8       \_\_\_\_   \_\_\_\_   \_\_\_\_\_                   \_\_\_\_\_                   \_\_\_\_\_

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18

19

20                   DUSTIN NORRIS

21       SUBSCRIBED AND SWORN BEFORE ME

22       THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

23

24

25       (Notary Public)    MY COMMISSION EXPIRES: \_\_\_\_\_